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COSTA RICA-PANAMA ARBITRATION

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ARGUMENT OF COSTA RICA

BEFORE THE

ARBITRATOR

HON. EDWARD DOUGLASS WHITE
CHIEF JUSTICE OF THE UNITED STATES

UNDER THE
PROVISIONS OF THE CONVENTION BETWEEN THE REPUBLIC OF COSTA RICA
AND THE REPUBLIC OF PANAMA, CONCLUDED MARCH 17, 1910.

WASHINGTON, D. C.
PRESS OF GIBSON BROTHERS, INC.
1913

JAN 11 1915

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SYNOPSIS

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CASE OF COSTA RICA

SYNOPSIS OF THE CASE

OF

COSTA RICA.

THE QUESTION SUBMITTED.

The treaty of March 17, 1910, between Costa Rica and Panama, under which this arbitration is held, submits for the decision of the Honorable Arbitrator the following question:

What is the boundary between Costa Rica and Panama under and most in accordance with the correct interpretation and true intention of the Award of the President of the French Republic made the 11th of September, 1900?

In Article I of the treaty it is recited that the High Contracting Parties consider that the boundary between their respective territories designated by this Award "is clear and indisputable in the region of the Pacific from Punta Burica to a point beyond Cerro Pando on the Central Cordillera near the ninth degree of north latitude," and no question, therefore, with respect to this portion of the line is raised in this arbitration.

It is further recited in Article I of the treaty that the High Contracting Parties "have not been able to reach an agreement in respect to the interpretation which ought to be given to the Arbitral Award as to the rest of the boundary line;" and under the terms of submission, therefore, the Honorable Arbitrator is called upon to determine where this portion of the boundary line should be located "under and most in accordance with the correct interpretation and

true intention of the Award of the President of the French Republic made the 11th of September, 1900."

The terms of the Award, so far as they relate to the portion of the boundary in dispute, are as follows:

The frontier between the Republics of Colombia and Costa Rica shall be formed by the spur (counterfort) of the Cordillera which starts from Cape Mona, on the Atlantic Ocean, and closes on the north the valley of the River Tarire or River Sixaola; thence by the chain of the watershed between the Atlantic and Pacific to about the ninth parallel of latitude.

The same Article of the treaty which formulates the question submitted to arbitration further provides that—

In order to decide this the Arbitrator will take into account all the facts, circumstances, and considerations which may have a bearing upon the case, as well as the limitation of the Loubet Award expressed in the letter of His Excellency Monsieur Delcassé, Minister of Foreign Relations of France, to His Excellency Señor Peralta, Minister of Costa Rica in Paris, of November 23, 1900, that this boundary line must be drawn within the confines of the territory in dispute as determined by the Convention of Paris between the Republic of Costa Rica and the Republic of Colombia of January 20, 1886.

THE TRUE INTENTION OF THE LOUBET AWARD.

The letter of Minister Delcassé of November 23, 1900, to which reference is made in the above quotation, was written in reply to a request from Señor Peralta for a more precise definition of the location of the line under the Award, in view of the fact that unless the Award was interpreted to mean that the line should follow the Yorquín instead of the Tarire River, it would include within the

region granted to Colombia territory not in dispute, which would be a positive violation of the terms of submission, and therefore could not have been the intention of the President of the French Republic. Minister Delcassé, speaking on behalf of the President of the French Republic, and recognizing the limitations which had been imposed upon him by the terms of the arbitration, explained that owing to the lack of precise geographical data the Arbitrator had not been able to fix the frontier except by means of general indications. He also admitted that there was no doubt, as Señor Peralta had observed, "that in conformity with the terms of Articles 2 and 3 of the Convention of Paris of January 20, 1886, this frontier line must be traced within the limits of the territory in dispute, as they are found to be from the text of said Articles." He therefore pointed out in conclusion that—

It is according to these principles that the Republics of Colombia and Costa Rica will have to proceed to the material determination of their frontiers, and the Arbitrator relies, in this particular, upon the spirit of conciliation and good understanding which has up to this time inspired the two interested governments.

This letter was clearly intended to open a way for the two governments by mutual agreement, in a spirit of conciliation and good understanding, to revise and correct the Award if it should be found that it exceeded the limits imposed by the terms of submission; and the statement in this letter that the Arbitrator had not been able to fix the frontier except by means of general indications, certainly introduces an element of uncertainty which gives a wide scope in interpreting the meaning of the Award.

Articles 2 and 3 of the Convention of Paris of January 20, 1886, which are referred to as imposing limitations upon

the Award, and which were confirmed and ratified by the treaty of 1896 under which the Award was made, are as follows:

ARTICLE 2. The territorial boundary which the Republic of Costa Rica claims, on the Atlantic side, reaches as far as the Island of the Escudo de Veragua and the River Chiriquí (Calobébora) inclusive; and on the Pacific side as far as the River Chiriquí Viejo, inclusive, to the east of Punta Burica. The territorial boundary which the United States of Colombia claims reaches, on the Atlantic side, as far as Cape Gracias a Dios, inclusive; and on the Pacific side, as far as the mouth of the River Golfito, in the Gulf of Dulce.

ARTICLE 3. The Arbitral Award must be confined to the territory disputed which lies within the extreme limits already stated, and it cannot in any way affect the rights which a third party, who has not intervened in the arbitration, may allege to the ownership of the territory included within the boundaries indicated.

It will be observed that Article 2 merely fixes the terminal points upon the Atlantic and Pacific of the boundary claimed by the respective parties, while Article 3 imposes an additional limitation which confines the Award to the disputed territory within these extreme limits. In other words, the scope of the Award was confined not merely to territory within the extreme limits stated in Article 2, but to territory within those limits which was actually in dispute in 1886, when that treaty was made.

It therefore becomes evident at the outset that the Award must be interpreted so as not to extend the boundary beyond the territory which was actually in dispute between Costa Rica and Colombia at the time the treaty of 1886 was entered into.

THE POWERS OF THE PRESENT ARBITRATOR.

It is also evident that the present terms of submission contemplate the adoption of an entirely different line from that indicated in the Award in case the general indications, by means of which the Award describes the boundary, cannot be followed, either because they would carry the line beyond the limits of the disputed territory, or because the precise geographical data now before the arbitrator, the lack of which compelled the former arbitrator to confine himself to "general indications" in describing the boundary, prove that the geographical conditions do not support the assumptions upon which these general indications were based.

If for these reasons, or for any other reasons disclosed by the facts presented in this case, the Award is found to be defective, the present arbitrator is at liberty to interpret the Award in such a way as to fix the line in accordance with the merits of the question, disregarding any complications growing out of imperfections in the Award, as it is not to be presumed that the Award of the President of the French Republic could have had any other intention than this. That this was the intention of the terms of submission, is evident from the provision above quoted that in order to decide the question submitted "the arbitrator will take into account all the facts, circumstances, and considerations which may have a bearing upon the case, as well as the limits of the Loubet Award expressed in the letter of His Excellency Monsieur Delcassé" etc.

THE LIMITS OF THE TERRITORY IN DISPUTE.

In considering the question of what territory was in dispute between Colombia and Costa Rica antecedent to their Treaty of 1886 for the purpose of determining the

limitation thereby imposed upon the scope of the Award, it is necessary to understand at the outset that this question relates to two entirely different sections of territory, each of which has a distinctly different historical and legal status.

One of these sections consists of the portion of the so-called Mosquito Coast extending toward the south from Cape Gracias a Dios, which marked about the center of that coast, and the other of these sections comprises a strip of territory extending between the Pacific and Atlantic Oceans to the eastward of a line running from the mouth of the River Golfito on the Pacific side to the mouth of the Sixaola River on the Atlantic. It will be observed that the extreme points of these two sections are those fixed in the treaty of 1886 as the extreme points of the boundary claimed by Colombia—*i. e.* Cape Gracias a Dios on the Atlantic side, and the mouth of the River Golfito on the Pacific side. The location of the line claimed by Colombia between these two points was not described in terms in that treaty, but all uncertainty as to its location was removed by the supplemental provision of that treaty limiting the scope of the Award to the territory then in dispute between the two governments. The evidence produced on behalf of Costa Rica in this case shows that up to that time Colombia had never asserted a claim against Costa Rica for any territory beyond the limits of the two sections above described, and as a matter of fact Colombia had never formally asserted a claim against Costa Rica for the possession of any territory on the Atlantic coast beyond the mouth of the Sixaola River. Costa Rica certainly did not understand that any such claim was outstanding at that time or in any way involved in the issues presented by that treaty. Furthermore when

the President of France was asked and agreed to act as arbitrator under the treaty of 1896, he was furnished by Costa Rica with a map on which was marked a line showing that no territory to the northward of the mouth of the Sixaola River was regarded as in dispute at that time. This map and the letter of June 9, 1897, with which it was transmitted, from Señor Peralta to the French Minister of Foreign Affairs, were made part of the Case of Costa Rica in that arbitration and were acquiesced in without question by Colombia.

THE MOSQUITO COAST.

The reason that Cape Gracias a Dios was inserted in this treaty by Colombia as the extreme point of the boundary claimed by it on the Atlantic Coast was unquestionably because of the desire of that Government not to prejudice or relinquish by implication the possibility of establishing in the future a claim to that part of the Nicaraguan coast adjacent to the mouth of the San Juan River on the ground that it was part of the Mosquito coast; for Colombia was very anxious if possible to secure or at least participate in the control of the Atlantic end of the proposed Nicaraguan Canal in addition to the control it then exercised over the Panama Canal route. On the other hand Costa Rica permitted Cape Gracias a Dios to be named as the extreme point of the boundary claimed by Colombia for several reasons, the most important of which were: first, because the point thus named was not in Costa Rican territory, and therefore was outside of the scope of the arbitration under this treaty, which expressly provided that the rights of third parties could not in any way be affected, and in the second place because it was well understood that the boundary claimed by Colombia

as far as Cape Gracias a Dios related only to the so-called Mosquito Coast which had never comprised any of the territory of Costa Rica, being limited, as is conclusively shown by the evidence presented in this case, to a portion of the Atlantic littoral of Nicaragua north of Punta Gorda, which is more than ten leagues above the San Juan River. Moreover, Colombia's claim to the Mosquito Coast was known to be without valid legal basis, and as is stated above, Colombia had never raised as a distinct issue with Costa Rica, by formal assertion or demand, any claim to any portion of Costa Rican territory, northward of the Sixaola River,—certainly no such claim was at issue between them in 1886; consequently, even if the Mosquito Coast was regarded as including any part of the Atlantic littoral of Costa Rica, it was not strictly speaking territory in dispute between the two countries within the meaning of the treaty of 1886.

The basis of Colombia's pretensions to a part of the so-called Mosquito Coast was a Royal Order of 1803 which provided that "the *part* of the Mosquito Coast from Cape Gracias a Dios, inclusive, toward the River Chagres, shall be segregated from the Captaincy-General of Guatemala, and be dependent on the Viceroyalty of Santa Fe." Colombia claimed to be entitled to possession as the successor to the Viceroyalty of Santa Fe. It will be found, however, from an examination of the arguments and evidence submitted in the case for Costa Rica, that this order never had the effect claimed for it by Colombia, having been adopted for military and not governmental purposes, and the occasion for it having soon thereafter ceased, it never became operative and was always afterwards disregarded, and in any event was superseded and abrogated by a Royal Order of 1806, which

retained the Mosquito Coast under the dependency of Guatemala.

In this connection attention is called to the very able and valuable opinion of the learned Spanish jurists, Señor Don Segismundo Moret y Prendergast and Señor Don Vicente Santamaría de Paredes, who have examined the question of the boundary between Costa Rica and Panama with reference to the Spanish Colonial law, at the request of the Government of Costa Rica, which opinion is now presented as part of the Case of Costa Rica.

It is further shown that the lower end of the Mosquito Coast never extended as far as the northern border of Costa Rica, and that Cape Gracias a Dios was about midway between the upper and lower extremities of that coast. It is also shown that the use of the words "toward the River Chagres" in the Order was not intended to and did not in fact extend the Mosquito Coast along the Atlantic littoral to that river, because the word "toward," as used in that Order, did not mean "as far as," but was merely intended to signify direction, as if that Order had read "that part of the Mosquito Coast below Cape Gracias a Dios," in distinction from the part above that point.

THE LAW APPLICABLE.

It is also proved in this case that Colombia had neither actual nor constructive possession of any part of the Mosquito Coast during its colonial period, or after its independence from Spain was established, so that the principle of *uti possidetis* universally adopted in South and Central America for the determination of boundaries could not be invoked by Colombia with reference to the Mosquito Coast. Colombia's claim to that coast rested wholly upon the Order of 1803, and for that reason Colombia

sought to modify the principle of *uti possidetis* by adding the words "*de jure*," so as to bring within its application a mere claim of right to possession in distinction from a claim based upon actual possession. Even under this modification of the *uti possidetis* principle, however, proof of the validity and continuance of the Order of 1803 down to and after Colombia's separation from Spain was essential to establish even a *prima facie* claim by Colombia to the Mosquito Coast.

Under these circumstances it is incredible that Colombia could ever have hoped to sustain this claim to the Mosquito Coast. Even if the Order of 1803 had not been revoked in 1806 it was always subject to revocation and it stands to reason that when Colombia achieved her independence after revolting from Spain in 1810, she ceased to have any further claim on the Mosquito Coast under the Order of 1803, for a revocable order, such as that was, could not under any principle of law be regarded as thereafter continuing in force for the purpose of transferring to a revolting colony territory situated in a loyal colony, and actually in the possession and control of Spain.

FAILURE OF COLOMBIA'S CLAIM.

It follows as a necessary conclusion from the evidence produced on behalf of Costa Rica that Colombia's claim of right to possession of the Mosquito Coast furnished no justification for extending the Colombian boundary to the north of the Sixaola River, even if the Royal Order of 1803 could be construed as carrying the Mosquito Coast south of the Nicaraguan boundary and along the Costa Rican littoral on the Atlantic. That President Loubet reached this conclusion is shown by the Award itself, which in express terms decides that the territory of Colombia

(Panama) shall not extend beyond Punta Mona on the Atlantic Coast, and that islands in proximity to the coast "situated to the west and to the northwest of the said Punta Mona shall belong to the Republic of Costa Rica." The Award also in express terms refers to other islands "more distant from the continent and included between the Coast of the Mosquitos and the Coast of the Isthmus of Panama."

It is evident, therefore, that it was the intention of President Loubet in this Award to decide that Costa Rican territory intervened along the Atlantic littoral between the Mosquito Coast and Panama, thus denying Colombia's claim that the Mosquito Coast extended south of the San Juan River or intervened between Costa Rica and the sea along any part of the littoral south of the Nicaraguan boundary.

It is also clear from the foregoing that in denying this claim President Loubet at the same time deprived himself of any ground which would justify starting the Atlantic end of the boundary at Punta Mona instead of at the mouth of the Sixaola River, for as above stated, apart from the Mosquito Coast claim, the utmost limit of the boundary for which Colombia had contended in the proceedings resulting in the arbitration treaty was the mouth of the Sixaola River.

THE ONLY TERRITORY ACTUALLY IN DISPUTE.

It remains to consider the course of the line claimed by Colombia, prior to the treaty of 1886, from the mouth of the River Golfito on the Pacific side to the mouth of the River Sixaola on the Atlantic, bounding on the westward the other section above mentioned, within which was comprised the territory in dispute between the two Govern-

ments at that time, and beyond which line, under the terms of the treaty the boundary can not be extended into Costa Rican territory.

In view of the character of the boundary of the Loubet Award and the acceptance by both Governments of that portion of it lying on the Pacific side of the Main Cordillera, it is necessary to consider in this connection only that portion of the territory in dispute lying between the Main Cordillera and the Atlantic Coast. Costa Rica admits that all the territory lying to the southeastward of the Sixaola River for its entire length from its mouth to its junction with the Yorquín River, and to the eastward of the Yorquín River from its mouth to its source was territory in dispute at the time the treaty of 1886 was made and within the meaning of Article 3 of that treaty.

Costa Rica denies that any territory to the westward of the Yorquín or to the northward of the Sixaola River was ever claimed by Colombia prior to 1886, or was in dispute between the two Governments at the time the treaty of 1886 was entered into or prior to the arbitration treaty under which the Loubet Award was made. It will be found that this denial is completely sustained by the proofs and arguments presented on behalf of Costa Rica.

THE BOUNDARY UNDER COLONIAL AND INTERNATIONAL LAW.

A boundary existed between Costa Rica and Panama while they were still Spanish provinces for several years after Colombia had declared her independence of Spain, and subsequently, in the latter part of 1821, when they in turn declared their independence the demarcation of the boundary between them as independent states first became an international question, with which question Colombia

was not concerned until the following year. In this connection it should be noted that the demarcation of the boundary between Costa Rica and Panama presents a distinctly different question from that raised by Colombia's claim to the Mosquito coast. The determination of the boundary between Costa Rica and Panama upon their independence was governed then, as it has been ever since, by the principle of *uti possidetis* in 1821, and after Panama had joined the Republic of Colombia and Costa Rica had joined the United Provinces of the Centre of America, this principle was recognized as applicable to that boundary in the treaty entered into in 1825 by those Powers. By this treaty they guaranteed in Article 5—

the integrity of their respective territories against the attempts and incursions of the subjects of the King of Spain and their adherents, on the same footing in which they were found naturally before the present War of Independence.

And they agreed in Article 7 —

to respect their limits as they are at present, reserving the making, in a friendly manner, by means of a Special Convention, of the demarcation by a line dividing one State from the other, as soon as circumstances may permit it, or when one of the parties manifests to the other a desire to take up this negotiation.

The boundary line claimed by Costa Rica at that time, and ever since, as representing the real divisional line between Panama and Costa Rica as provinces and between the territories actually possessed by them respectively at the time of their declaration of independence in 1821, was formed, on the Atlantic side of the Main Cordillera, by the Chiriquí or Calobébora River, which empties into the sea

at a point opposite the Escudo de Veragua. The justice of this contention is fully sustained by the above-mentioned opinion of Señores Moret and de Paredes, who have examined the question with reference to Spanish Colonial law.

This line left on the Costa Rican side of the boundary the entire region known as Bocas del Toro, including the bay of that name comprising the Chiriquí Lagoon and the Bay of Almirante, which, as a glance at the map will show, afforded splendid harbor facilities, of immense value even then on account of the scarcity of spacious harbors in that vicinity, and of much greater value in later years in relation to the Panama Canal.

JURISDICTIONAL CONFLICT.

Costa Rica was left in undisturbed and unquestioned possession of all the region to the west of the Chiriquí or Calobébora River, above mentioned, until 1836, when the Congress of New Granada (successor of the Republic of Colombia) decreed the occupation of Bocas del Toro, which was described in that decree as extending along the Atlantic coast as far as the "Culebras" River. There was no river in that region to which the name "Culebras" properly applied in those days, but the river intended in this decree has been demonstrated to be the river called Changuinola on modern maps.

In the following year New Granada adopted another decree organizing a new canton in this Bocas del Toro region, thus demonstrating that it had not been in the possession of New Granada up to that time. These decrees have always been regarded by Costa Rica as an unlawful encroachment upon Costa Rican territory, the usurpation of which was a violation of the above quoted stipulations of the treaty of 1825.

TREATY OF 1841.

While this question was still in the stage of diplomatic discussion, the Federation of Central America dissolved, Costa Rica resuming its independent existence as a separate state (1838), and shortly thereafter Panama separated from New Granada, becoming the Republic of the Isthmus (1840). These two independent states thereupon entered into a treaty, in 1841, of mutual recognition and friendship, by which it was agreed that—

The state of Costa Rica reserves its right to claim from the state of the Isthmus the possession of *Bocatoro* upon the Atlantic Ocean, which the Government of New Granada had occupied, going beyond the division line located at the Escudo de Veraguas.

Before these two states could reach an agreement on the adjustment of their boundary, as contemplated in this treaty, Panama was again absorbed by New Granada, and the boundary question was thereafter left in abeyance for upwards of fifteen years.

NEO-GRANADIAN CONTENTIONS.

Meanwhile, by way of preparation for the renewal of this discussion, the neo-Granadian Government secured two reports on the subject from Señor Fernández Madrid, an eminent statesman of that Republic, one made by him as a private individual in 1852, and the other prepared by him and adopted in 1855 by the neo-Granadian Senate of which he was a member. These two reports are substantially identical, and the conclusion reached in them is that the "Culebras" River marks the end of the boundary on the Atlantic, but that "as there cannot fail to be noted in one writer or another some dis-

crepancy concerning which of the points stated (Doraces, Culebras or Punta Careta) is the one which in reality does separate the two jurisdictions," it will be admissible for the two governments to deviate from the strictly legal line, and for their accommodation to take another which, without departing in any substantial way from the boundaries indicated, might harmonize more nearly with what was desirable for both countries.

The real interest of New Granada in this boundary question at that time is disclosed by the statement found in these reports that it does not seem impossible to reach an agreement as above suggested "if we confine ourselves to securing our possession of Bocas del Toro and reserving to ourselves a good anchorage in the Gulf of Dulce, being thoroughly convinced that this being settled in a satisfactory manner, all the other points are of entirely secondary interest."

TREATY OF 1856.

In the year 1855 New Granada opened negotiations with Costa Rica for the settlement of this boundary, and in the following year the Treaty of June 11, 1856, was negotiated fixing this portion of the boundary along the middle of the principal channel of the River Doraces from its source to its mouth in the Atlantic. In agreeing to this boundary it was understood on the part of Costa Rica that the Doraces River was the same as the old Estrella, which was called by some geographers the "Culebras," and is now known as the Changuinola on modern maps. This river, it will be remembered, was the same one which, under the name of the Culebras in New Granada's usurpatory decree of 1836, had marked the westernmost extreme on the Atlantic Coast of the Bocas del Toro territory, which at that time was the utmost limit of New

Granada's pretensions. Not content, however, with the extreme concession thus made in this treaty, and at a time when Costa Rica was embarrassed by a foreign war and ravaged by cholera, New Granada sought to force even further concessions from that unhappy country by imposing an interpretation upon this treaty the effect of which would have been to identify the "Doraces" River with "the first river which is found at a short distance to the southeast of Punta Careta," meaning thereby the present Sixaola River. Costa Rica promptly refused to accept this interpretation, and rejected this treaty, which it is important to note never became effective.

TREATY OF 1865.

Upon the failure of the treaty of 1856 Costa Rica decided to regain possession of the region then in dispute, and in the year 1859 took steps providing for the control of the archipelago of Bocas del Toro, by the governor and commander of the Port of Moín, who was authorized to appoint military and police judges in that region, and to expel wrong doers, and exercised other acts of jurisdiction over that region.

As a result of these proceedings, negotiations were undertaken in 1855 between Costa Rica and the Government of the United States of Colombia, then recently established, for the settlement of this question, and on March 30 of that year a treaty was signed by which the boundary of the territory now under consideration was fixed along the main channel of the Cañaveral River from its source to its mouth on the Atlantic. The boundary thus fixed by this treaty was not quite so favorable to Costa Rica as the boundary originally claimed by that country, but it included within

the jurisdiction of Costa Rica the entire Bocas del Toro region which New Granada had sought to obtain under the Treaty of 1856. This boundary has always been recognized as conforming most nearly, both legally and historically to the true boundary, having reference to the principle of *uti possidetis* in 1821 which is controlling in this case. It is worthy of note that the treaty adopting this boundary was approved by the executive power and by the Senate of Colombia, and also on the first reading by the Colombian House of Representatives, and only failed of ratification because its final approval, after a second reading, was left to the legislature for the following year, which rejected it for reasons entirely unrelated to the boundary question.

TREATY OF 1873.

Following the failure to ratify the treaty of 1865, jurisdictional conflicts arose both on the Atlantic and the Pacific side of the territory in dispute, and an attempt was again made to agree upon a treaty settling the boundary, and a treaty for that purpose was finally negotiated in April 1873, by which the section of the boundary now under consideration was fixed along the course of the River Bananos from its source to its outlet in the Bay of Almirante. The line thus fixed was somewhat more favorable to Costa Rica than the line fixed by the Treaty of 1856 along the Doraces or Changuinola River, because the Bananos River lies to the east of that river and empties into Almirante Bay, a part of which was thus reserved to Costa Rica. It was much less favorable, however, to Costa Rica than the Treaty of 1865, and as it was not satisfactory to either country it failed of ratification.

CONTENTIONS AS TO TERRITORIAL POSSESSION PRIOR TO ARBITRATION.

After the failure of this treaty, jurisdictional conflicts were renewed, and it became evident that a settlement of this boundary by agreement would be impossible, and that resort must be had to arbitration. In anticipation of arbitration, and by way of preparation for it, the Colombian Senate adopted on July 13, 1880 a series of conclusions relating to this boundary, only the first and third of which require examination on this point. The first of these conclusions was as follows:

1. Colombia has, under titles emanating from the Spanish Government and the *uti possidetis* of 1810, a perfect right of dominion to, and is in possession of, the territory which extends toward the north, between the Atlantic and Pacific Oceans, to the following line: From the mouth of the River Culebras upon the Atlantic, going upstream to its source; thence a line along the crest of the range of Las Cruces to the origin of the River Golfito; thence the natural course of the latter river to its outlet into the Gulf Dulce in the Pacific.

Costa Rica has never admitted that the name Culebras could properly be applied to the Sixaola River. Contemporaneous occurrences, however, enabled Colombia to claim that in using this name in the extract above quoted, it was intended to apply to the Sixaola River. Costa Rica has always contended, and it seems to have been admitted on the part of Colombia, that the Sixaola River proper extends from its outlet in the Atlantic only up to its junction with the Yorquín, and that from that point up Colombia intended the name Culebras to apply to the Yorquín River in distinction from the Tarire, which joins with the Yorquín and four other tributaries in making the

Sixaola. This construction is sustained by the third conclusion, above mentioned, of the Colombian Senate, which is as follows:

3. Colombia has been in the uninterrupted possession of the territory embraced within the limits indicated in Conclusion 1.

This statement clearly identifies the Yorquín and not the Tarire as the upper part of the river to which the name Culebras is applied in the first Conclusion, because Colombia neither up to that time nor since, ever had any sort of possession of the territory to the westward of the Yorquín between it and the Tarire, the possession of which territory had been in the uninterrupted and unquestioned possession of Costa Rica for upwards of three hundred years.

It will be found upon an examination of Costa Rica's case that all of the foregoing statements are fully sustained by the arguments and evidence therein presented, and it will be found further that until after 1870 Colombia had never exercised any jurisdiction over or even had constructive possession of any territory in this region west of the Changuinola River. This was the situation and the extent of Colombia's claims up to the year 1880, when the first treaty for the settlement of this question by arbitration was entered into, and no substantial change took place in the situation, and no attempt was made by Colombia to encroach further upon Costa Rican territory prior to the making of the second arbitration treaty, dated January 20, 1886, which contained in the Third Article the stipulation already quoted providing that the arbitral award must be confined to the disputed territory which lies within the extreme limits already stated.

THE DISPUTED TERRITORY SUBMITTED TO
ARBITRATION AND THE SILVELA LINE.

Prior to the treaty of 1886 a *status quo* line resting chiefly upon actual possession had been established, and from that period down to the present time the entire region to the westward of the Yorquín and northward of the Sixaola Rivers has remained continuously in the possession of Costa Rica just as it always had been from the beginning of the Colonial period. There was, therefore, as a matter of fact no difference in the area of the territory in dispute from the date of the arbitration treaty in 1886 down to the date of the Loubet Award, so that the stipulation above quoted from the treaty of 1886 had the same effect whether applied to conditions in 1886 or 1900. Nevertheless in another aspect this stipulation was of great importance and demonstrates the foresight which was shown in adopting it. It was intended to prevent any attempt on either side to bring into the litigation any claims or extend the scope of the arbitration over territory not in dispute at the time the arbitration was agreed upon. Such an attempt was made in presenting Colombia's case in the arbitration before President Loubet, when the representative of Colombia formally demanded on the part of his government a line, known as the Silvela line, starting several miles to the west of the River Golfito, which was fixed by the treaty of 1886 as the extreme limit of the boundary which could be claimed by Colombia, which line he carried from that point due north to its intersection with the Teliri or Tarire River and thence by a straight line slightly to the west of north until it reached the confluence of the Sarapiquí River with the San Juan River.

This so called Silvela line embraced a vast extent of territory which Colombia never before had claimed, and about which there had never been any dispute between the two countries. Clearly Colombia's claim was inadmissible and incompetent to subject that territory to the hazard of arbitration, and that claim, therefore, should have been wholly disregarded by the arbitrator except in so far as it operated to limit rather than extend the area of the territory now claimed. For that purpose it was competent evidence against Colombia as an admission against the interest of that government which would not have been made unless it was true. In this connection, therefore, it should be noted that inasmuch as the Silvela line cuts across a part of the territory which Panama now claims as granted to it under the Loubet Award it is in effect an admission that the Award line included territory not in dispute.

THE DEFECTS OF THE AWARD.

With these considerations in mind, a glance at the map will show that the entire course of the Loubet Award boundary, from Punta Mona to a point near Cerro Pando on the Main Cordillera, lies beyond the Sixaola-Yorquín Rivers, and in fact even beyond the Sixaola-Tarire Rivers, and therefore for its entire length it runs through territory which was not in dispute, and was for that reason, excluded from the scope of that arbitration.

In addition to the defects above discussed, the case presented by Costa Rica shows that the Award of President Loubet is also subject to revision and correction because the presentation of Costa Rica's case was prejudiced by inequality of treatment during the Arbitration proceedings, and that the Award is further defective on account of

uncertainty and ambiguity by reason of the vagueness of its terms, which are confined to general indications, and also by reason of the fact disclosed by the report of the Commission of Engineers that the geographical conditions along the course of the line, as interpreted by Panama, do not support the assumptions upon which these general indications were based.

COSTA RICA'S CONTENTIONS.

In conclusion, therefore, Costa Rica contends that the Loubet Award must be interpreted in such a way as not to fix a line extending beyond even the most extravagant claim made by Colombia, but so as to confine the boundary within at least the limits of the territory actually in dispute as required by the terms of the treaty of 1886.

Costa Rica further contends that, bearing in mind the principle of *uti possidetis* in 1821 as controlling in this case, together with the right of prescription based upon continuous possession by Costa Rica and the entire absence of possession by Colombia or Panama at that time of any of the territory in dispute, or of any of the territory westward of the Changuinola River until very recent years, it would be more in accordance with justice and historical accuracy that a line approaching more nearly the line which both parties agreed to in their Treaty of 1865, or at least in their Treaty of 1873, should now be adopted as the boundary between them. It will be observed that the section of the Loubet Award line on the Pacific side of the Main Cordillera follows very closely the line adopted in those treaties.

PART FIRST

HISTORICAL DEVELOPMENT
OF THE QUESTION

Treaties and International Relations
The Paris Arbitration

CHAPTER I.

FORMATION OF THE STATES OF COLOMBIA, COSTA RICA AND PANAMA. TREATY OF 1825.

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- (1) ORGANIZATION OF CENTRAL AMERICA (1824).
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I. THE BOUNDARY QUESTION ACCORDING TO INTERNATIONAL LAW. OBJECT AND DIVISION OF THIS SECTION.

In examining the boundary question in the light of international law, the discussion will be divided into two parts, the first devoted to the consideration of the *historical development of this question*, or the history of the treaties and the international relations between Costa Rica and Colombia as to their boundaries, and the second to the specific question under discussion before the Honorable Chief Justice, pursuant to the Treaty of Washington of 1910 (Doc. No. 473).

In the first place it will be shown how the two states which were the contending parties were formed, and how the State of Panama—which has only *in part* taken the place of Colombia with respect to the claims of that Government under the decision of the President of the French Republic—was subsequently organized.

It is clear that from the moment the old Spanish provinces of America were emancipated from Spain, and were converted into independent states, the questions relating to their boundaries passed from the sphere of

colonial law into that of international law. But these two classifications of law necessarily run together, not only by reason of their reference to the same peoples, having an identical geographic and historic actuality, but also because those states in the exercise of their sovereignty, and under the principle known as the *uti possidetis*, adopted for their international boundaries the same ones that had served as intercolonial.

II. THE STATE OF COLOMBIA AND THE STATE OF PANAMA.

- (1) THE CRY FOR INDEPENDENCE OF 1810 HAD NO ECHO IN PANAMA. COLOMBIA WAS ORGANIZED IN 1819 WITHOUT BEING EXTENDED TO PANAMA. IN OCTOBER, 1821, COLOMBIA LEGISLATED CONCERNING THE DIVISION OF THE NATIONAL TERRITORY WITHOUT INCLUDING THAT OF PANAMA.

The call for independence, launched at Bogotá on the 20th day of July, 1810, found no echo in any part of the Province of Panama. This province, which had remained loyal and tenacious in its adherence to Spain, was a portion of the old Viceroyalty of Santa Fe. It remained under the direct authority of the mother country for a long time after the organization and definitive constitution of the Republic of Colombia, which was formed out of the provinces of Venezuela and New Granada by the law of December 17, 1819, passed by the Congress that met in the city of Angostura (Doc. No. 241), ratified and amplified by the Congress of Cúcuta on July 12, 1821 (Doc. No. 242).

Following this, on October 8, 1821, the Colombian Congress passed a law for the erection and the political

regulation of the departments, provinces and cantons into which the territory of the Republic was to be divided. The number of departments was fixed at seven, to wit, *Orinoco, Venezuela, Sulia, Boyacá, Cundinamarca, Cauca* and *Magdalena*. The Isthmus of Panama was not included, because as yet it formed no part of the Colombian State.

It was to this new state, excluding Panama, that President Monroe referred, in his Message to the Congress of the United States, when on March 8, 1822 (Doc. No. 248), he said:

"The provinces composing the Republic of Colombia, after having separately declared their independence, were united by a fundamental law of the 17th of December, 1819."

It is clear that Panama, which did not proclaim its independence until the end of 1821, could not have figured, in 1819, among the provinces which, according to the message quoted, *then* formed the Republic of Colombia.

In describing its territory, the Special Diplomatic Agent of Colombia in Washington, Señor Manuel Torres, in a state paper addressed at Philadelphia on November 30, 1821 (Doc. No. 246), to the Secretary of State of the United States, attributed to it a coast extent of 1,200 miles on the Atlantic, from the Orinoco to the Isthmus of *Darién*, and of 700 miles on the Pacific, from Panama (the southern border of the latter being understood) to the Bay of Tumbes; for at that time Torres did not know that Panama had proclaimed her independence from Spain and had decided to join Colombia, that action having actually taken place only two days before the date of his communication. Still, even if he had known of the

fact, the union with Colombia was not accepted until some months later.

(2) INDEPENDENCE OF PANAMA PROCLAIMED ON NOVEMBER 28, 1821. INCORPORATION OF PANAMA INTO THE REPUBLIC OF COLOMBIA, FEBRUARY 9, 1822. PANAMANIAN TERRITORY.

Without the slightest assistance from Colombia, or the loss of a drop of blood, the Province of Panama succeeded in attaining its political emancipation, with the help of the Superior Chief Representative of the mother country; and in the very act of proclaiming its independence Panama determined to ask incorporation with the powerful state which, covered with glory and full of splendid promise for the future, had been founded by the immortal Bolívar.

Referring to the deliberations that preceded the proclamation of Panama's independence, a distinguished publicist of that nation and an ex-minister in the diplomatic service of Panama in Washington, Doctor Don Ramón M. Valdés, said:

"At the general meeting when the independence of the Isthmus was resolved upon, several patriotic Panamanians held the view that the Isthmus should not be added to Colombia, nor to any other nation, but that it should constitute an independent State. This idea, although it had numerous partizans, did not prevail on the 28th of November, 1821; but a few years later those who had combatted that plan most strongly confessed their error, because the political, industrial and economic condition of the provinces of the Isthmus had suffered by reason of the dependency of those provinces upon the government at Bogotá, which was situated hundreds of leagues distant in the interior of the country, the

needs and customs of which were entirely different from those of the Isthmus." (*Geografía de Panamá*, p. 43.)

On the 29th day of November, of the year 1821, above mentioned, the Superior Chief, Don José de Fábrega, sent to President Bolívar the petition for the incorporation of Panama in the Republic of Colombia (Doc. No. 245); but doubtless some difficulty arose to prevent its immediate and favorable acceptance, for on January 10, 1822, that Chief is again writing to the Vice-President of the Republic on this subject (Doc. No. 247).

As will be seen from that communication, Panama asked to be incorporated with Colombia, not unconditionally, but as forming a separate department, with a position similar to that which it had always held while a part of the Viceroyalty of the New Kingdom of Granada, and with the territorial jurisdiction designated for its then extinct Royal Audiencia by Law IV, Title XV, Book II of the *Recopilación de Indias* (Doc. No. 106), which jurisdiction had been kept intact by the Royal *cédula* of July 17, 1751 (Doc. No. 168), for the Government and *Comandancia general* of Panama.

Señor Fábrega enumerated as component parts of the territory of the Department of Panama, the Governments of *Veragua*, *Darién* and *Portobelo*, and the *Alcaldía mayor* of *Natá*, all subordinate in military and political matters to the *Comandancia general* and *Superior Government of the Capital*. The Mosquito Coast was a territory absolutely outside the Province and ex-Kingdom of Panama, and therefore it was not, and could not be, mentioned in that important document.

In accordance with the wishes of the Panamanians, the executive decree of Colombia, dated February 9, 1822,

created the Department of the Isthmus, *with the provinces which, under the Spanish administration, were covered by the old Comandancia general of Panama, and with the boundaries possessed by those provinces.* In the following May the Colombian Constitution of Cúcuta, of 1821, was promulgated throughout the entire Isthmus.

(3) LAW CONCERNING TERRITORIAL DIVISION OF COLOMBIA, ISSUED JUNE 25, 1824. THE MOSQUITO COAST DOES NOT APPEAR AS A PART OF COLOMBIAN TERRITORY. LIMITS OF COSTA RICA AND VERAGUA.

In 1824, June 25 (Doc. No. 251), the legislature of the Republic of Colombia decreed the division of *the whole territory of the Republic* into twelve departments, with their capitals, part of which decree was as follows:

“ART. 9. THE ISTHMUS: its capital is Panama.”

And it was declared that these twelve departments should embrace the provinces and cantons therein set forth, the Isthmus being divided as follows:

“ART. 10. The Department of the Isthmus embraces the Provinces: (1) of Panama, its capital Panama; and (2) Veragua, its capital Veragua.”

The cantons of the Province of Panama were as follows: (1) Panama, (2) Portobelo, (3) Chorreras, (4) *Natá*, (5) Los Santos, and (6) Yavisa. These cantons are of no interest now, being foreign to the question under discussion.

The cantons into which the Province of Veragua was divided and which are related to the question at issue were: “(1) *Santiago de Veragua*; (2) *Mesa*; (3) *Alanje*; (4) *Guaymí*; and its capital town is *Remedios*.”

It will be observed that *Natá*, an *Alcaldía mayor* independent *ab initio* of Veragua, was included as the fourth canton in the Province of Panama, to which it had always been subject. Veragua and Natá continued just as they had been previously—the latter (*Natá*) subject to the Province of Panama, and the former (Veragua) a separate province by itself.

Veragua and Costa Rica were the border provinces of Colombia and of Central America, respectively; the first on the east and the second on the west.

This is further confirmed by the noteworthy work published in London by the first Vice-President of Colombia, who was President of the Constituent Congress of Angostura and the first Minister of the Republic in England, Don Francisco Antonio Zea, under the title of "COLOMBIA; Being a Geographical, Statistical, etc., Account of that Country," in 2 volumes; London, 1822. He gives the boundaries of the Province of Veragua as follows:

"* * * to the North the Caribbean Sea; to the East the Province of Darién in South America, separated from Veragua by the Cordillera of Cantiagua; to the West, Costa Rica, and to the South the great Pacific Ocean."

- (4) INDEPENDENCE OF PANAMA (1903). ITS TERRITORY, ACCORDING TO THE PANAMANIAN CONSTITUTION OF 1904. THE ARCHIPELAGO OF SAN ANDRÉS AND THE MOSQUITO COAST FORM NO PART OF THAT TERRITORY.

It will be unnecessary here to relate the changes the Department of Panama underwent during the eight decades following its incorporation with the Colombian state. At times it was administered in accordance with a strictly centralized political system, and at others under a Federal

system more or less lax. It is sufficient to say that on November 3, 1903, Panama decided to separate herself definitively from the Republic of Colombia and form a sovereign and independent state. That state when so formed was at once recognized by most of the nations of the civilized world and obtained from the United States of America a guaranty of its independence.

The new republic, in putting forth its constitution, under date of February 13, 1904¹ (Doc. No. 621), made the following declaration with respect to the national domain:

"ART. 3. The territory of the Republic is composed of all the territory from which the State of Panama was formed by the amendment to the Granada Constitution of 1853, on February 27, 1855, and which was transformed in 1886 into the Department of Panama, together with its islands, and of the continental and insular territory, which was adjudged to the Republic of Colombia in the award made by the President of the French Republic on September 11, 1900. The territory of the Republic remains subject to the jurisdictional limitations stipulated in public treaties concluded with the United States of North America for the construction, maintenance, or sanitation of any means of inter-oceanic transit.

"The boundaries with the Republic of Colombia shall be determined by public treaties."

So that, to ascertain the extent of Panama's national territory under its constitution, there are five public documents that must be taken into consideration, to wit:

- (a) The Constitution of New Granada, of 1853 (Doc. No. 297);
- (b) The constitutional amendment of February 27, 1855 (Doc. No. 301);

¹ Papers relating to the foreign relations of the United States, 1904, page 562.

(c) The Colombian Constitution of 1886 (Doc. No. 371),

(d) The award rendered by the President of the French Republic on September 11, 1900 (Doc. Nos. 413, 414),

(e) Treaties concluded with the United States of America for the construction, maintenance and sanitation of any means of inter-oceanic transit (Doc. No. 281).¹

These documents will now be examined.

The constitution of New Granada, promulgated May 28, 1853, in its Article 1 provided that—

“The old Viceroyalty of New Granada, which was a part of the extinct Republic of Colombia, and subsequently formed the Republic of New Granada, is constituted, hereby, a Republic, democratic, free, sovereign, independent of any power, authority or foreign dominion, and is not nor shall it ever be the possession of any family or person whatever.”

Here is identified as the same, the territory of the Republic of New Granada and that of the old vice-royalty of that name.

The constitutional amendment of February 27, 1855, contained the following provisions.

“ART. 1. The territory embraced by the Provinces of the Isthmus, to wit: *Panamá, Azuero, Veragua* and *Chiriquí*, form one Federal State, sovereign and an integral part of New Granada, under the name of the State of Panama.”

“ART. 2. The limits of the State upon the *West* shall be those that may be definitively established between New Granada and Costa Rica. A later law shall fix the boundaries that are to separate it from the rest of the territory of the Republic.”

¹See also treaty between the United States and Panama, November 18, 1903, in Papers relating to the Foreign Relations of the United States, 1904, pp. 543-551.

The western frontier was left otherwise undetermined, but it is evident that it reached to the extreme limit of the Provinces of Veragua and Chiriquí, in bordering upon Costa Rica; beyond that it could not go.

The Colombian Constitution promulgated on August 4, 1886, provided in Article 3:

"The boundaries of the Republic are the same as those which in 1810 separated the Viceroyalty of New Granada from the Captaincies-General of Venezuela and Guatemala, from the Viceroyalty of Peru and from the Portuguese Possessions of Brazil; and, provisionally, in respect to Ecuador, those designated by the Treaty of July 9, 1856. The divisional lines separating Colombia from the adjoining nations shall be definitively fixed by public treaties, the latter being based upon the principle of the legal *uti possidetis* of 1810."

Article 4 added: "* * * The old national territories shall remain incorporated in the sections to which they belonged originally." The same uncertainty that has been previously noted is to be observed here.

Article XXXV of the treaty concluded by the United States of America with New Granada, on December 12, 1846, guaranteed, among other provisions, the rights of sovereignty and ownership held and possessed by New Granada over the territory generally denominated as the *Isthmus of Panama*, "from its southernmost extremity as far as the boundary of Costa Rica;" and when the new Panamanian nation was established, the first article of the treaty concluded between it and the United States (on November 18, 1903) imposed upon the latter nation the obligation of guaranteeing and maintaining the independence of the Republic of Panama, without specifying its limits.

There now remains to be considered the reference made to the Award of the President of the French Republic. In this connection two observations may be made: First, that the meaning and the effect of that Award having been under discussion (as they were) at the very time when the Republic of Panama was surging forward into its international life, the reference made to the Award in the Panamanian Constitution is and must be understood as conditioned upon the solution to be finally arrived at in the pending controversy; second, that there was no exactness or precision in declaring, in the said constitutional article, that *the whole of the continental and insular territory* adjudicated to the Republic of Colombia in said Award was an integral part of Panamanian territory, because it is evident that the Archipelago of San Andrés, attributed to Colombia by the decision and retained by that Republic, never had belonged to Panama—nor does it belong to her to-day—and because it is proved in another part of this Argument that any portion of territory which, according to that decision, appears to be granted to Colombia *beyond the limits that were assigned by the Spanish and Colombian laws to the ancient PROVINCE OF VERAGUA and to the ancient Audiencia of TIERRA FIRME*, IS NOT AND CANNOT BE AN APPURTENANCE OF THE REPUBLIC OF PANAMA.

In support of this view it is appropriate to cite the learned opinion of Señor Don Ricardo J. Alfaro, who was the consulting counsel of the Legation of Panama at Washington. In the statement which he presented to the National Executive Power of his country, under the title of “*Límites entre Panamá y Costa Rica*,” at page 93, he expressed himself thus:

“Besides, the Republic of Panama (this is my own opinion, purely personal) does not claim any right over the islands mentioned, inasmuch as it was constituted out of the old State and Department of Panama, which *never had under its jurisdiction the islands of the Canton of SAN ANDRÉS, always dependencies of the PROVINCE OF CARTAGENA AND DEPARTMENT OF BOLÍVAR.* And since it is also very clear that Article III of the Constitution established the fact that the national territory is composed of the continental and insular territory adjudicated to Colombia by the Loubet Award, its disposition COULD ONLY REFER TO THE INSULAR TERRITORY NEAR THE COASTS OF THE ISTHMUS AND OVER WHICH THE OLD POLITICAL PANAMANIAN DISTRICTS EXERCISED JURISDICTION.”

Summing up what is contained in the five documents under consideration, it appears that the New Granadian Constitution of 1853 makes an equation of the territory of the republic and that of the old viceroyalty; by the amendment of 1855 creating the sovereign State of Panama, the provinces of *Veragua* and *Chiriquí* were located upon the borders of Costa Rica, and as regards the divisional line its exact description was postponed until it should be definitively established; by the Constitution of 1886 the equation of the territory proclaimed in 1853 was renewed; by the treaties concluded with the United States of America the guaranty therein expressed was agreed upon and in one treaty the boundaries were fixed, but in the other this was not done; and, finally, that the text of the Panamanian Constitution is indefinite and can only be understood as *conditioned upon the results of the present controversy.*

It must be borne in mind, furthermore, that there is nothing in all that has been set forth above which would

justify the assumption that to the present Republic of Panama belongs a single square foot of the territory which, as pertaining to the Mosquito Coast, was the subject of the Royal order of November 20, 1803 (Doc. No. 191), providing for the segregation from Guatemala and the addition to Santa Fe of a part of said coast, from Cape Gracias a Dios, inclusive, towards the Chagres River.

III. THE STATE OF COSTA RICA.

(I) ORGANIZATION OF CENTRAL AMERICA (1824.) ITS TERRITORY.

The news of the revolutionary movement that took place in Spain, in 1820, revived the insurrection in Mexico, which had been subdued. General Itúrbide placed himself at its head and on the 24th of February, 1821, put forth the manifesto of Iguala and proclaimed the independence of Mexico (Doc. No. 243). Following this example, Guatemala also declared herself independent from Spain in September, and Costa Rica in October of the same year.

General Itúrbide, on May, 1822, caused himself to be proclaimed Emperor of Mexico, under the title of Agustín I. When in March, 1823, the Empire was dissolved, the provinces of the old Captaincy-General of Guatemala gathered in a Constituent Assembly, and in July of the same year, that body ratified their independence from both Spain and Mexico.

That assembly adopted the *Constitution of the United Provinces of the Center of America*, of November 22, 1824 (Doc. No. 254), and thus formed a republican federation,

composed of five states: Guatemala, Salvador, Honduras, Nicaragua and Costa Rica, each of which, however, had its own constitution.

The federation endured for fourteen years, when the federal compact was broken (by the Congress of 1838) and the five republics composing it entered severally upon an entirely independent existence.

Title I, Section II, Articles 5 to 7, of the Central American Constitution, relating to territory, provided as follows:

"ART. 5. The territory of the Republic is the same that was formerly embraced in the old Kingdom of Guatemala, with the exception, at present, of the Provinces of Chiapas.

"ART. 6. The federation is now composed of five States, which are: Costa Rica, Nicaragua, Honduras, El Salvador and Guatemala. The Province of Chiapas will be held as a State in the Federation when it freely joins.

"ART. 7. The demarcation of the territory of the States shall be made by a constitutional law, using the requisite data."

(2) FUNDAMENTAL LAW OF COSTA RICA (1825).

ITS TERRITORY.

The fundamental law of the State of Costa Rica, of January 21, 1825 (Doc. No. 255), stated perfectly the equation between its territory and that of the Spanish province of the same name, fixing its limits in the *same way* that they existed in fact and in law at the moment of the termination of the sovereignty of Spain. It reads:

"ART. 15. The territory of the State is now extended, from west to east, from the River Salto, which divides it from Nicaragua to the River *Chiriquí*, the end of the Republic of Colombia; and north-south *from one sea to the other*, its limits on the north being at the mouth of the River San Juan and the *Escudo*

de Veragua, and on the south at the outlet of the River Alvarado and that of Chiriquí."

The expression, "now extended," used in relation to Nicaragua, was so used because the addition of Nicoya was expected, that province having manifested its desire to unite with Costa Rica; and it was in fact so united by the decree of the Federal Congress of the Republic of Central America, of December 9, 1825 (Doc. No. 258).

The Law of Bases and Guaranties, of Costa Rica, enacted March 8, 1841 (Doc. No. 277), reads as follows:

"ART. 2. The territory of the State is embraced within the following limits: upon the West, the River La Flor,¹ the line continuing by the littoral of Lake Nicaragua and the River San Juan to the outlet of the latter in the Atlantic Ocean; upon the North, the *same Ocean, from the mouth of the River San Juan to the Escudo de Veragua*; upon the East *from said point to the River Chiriquí*; and upon the South *from this river, following the coast of the Pacific Ocean, to that of La Flor.*"

According to the Political Constitution of the State, promulgated April 9, 1844 (Doc. No. 280), the boundaries of Costa Rica were fixed as follows:

"TITLE II. ART. 47. The State recognizes as the limits of its territory; on the West, from the outlet of the River of La Flor on the Pacific, and continuing the line by the littoral of Lake Nicaragua and River San Juan to the outlet of the latter in the Atlantic; on the North, *the same sea from the mouth of the San Juan to the Escudo de Veragua*; on the East, *from this point to the River Chiriquí*, and on the South from the

¹ The Province of Nicoya had already been incorporated with Costa Rica, under the name of "Guanacaste," by virtue of the will of its inhabitants and of the approval of the Central American Federal Congress.

mouth of this river to that of La Flor; but the frontier line on the side of the State of Nicaragua will be definitively fixed when Costa Rica is heard in the national representation, or in default of the latter the matter is submitted to the impartial judgment of one or more States of the Republic.

"ART. 48. The State shall be designated, "Free State of Costa Rica."

The Political Constitution of January 21, 1847, Art. 25, Title II, used the same language.

But the constitution of December 26, 1859 (Doc. No. 315), provided, in Article 4, that

"The territory of the Republic is embraced within the following limits: on the side which borders upon Nicaragua, those fixed by the treaty made with that Republic on the 15th of April, 1858; upon that of New Granada, those of the *uti possidetis* of 1826, except so far as determined by subsequent treaties with that nation, and upon the other sides the Atlantic and Pacific."

And the constitution of December 7, 1871 (Doc. No. 610), the one now in force, made the following provision:

"ART. 3. The territory of the Republic is comprised between the Atlantic and Pacific Oceans. It is bounded on the North-west by Nicaragua, from which it is separated by the divisionary line marked out by the Treaty of April 15, 1858, concluded with that Republic; and *on the South-east by the Republic of Colombia; with respect to which the uti possidetis of 1826 is to be observed.* These boundaries may be varied by treaties with the contiguous nations, or by arbitral decision as the case may be."

In substance these constitutional declarations are alike, since the *uti possidetis of 1826*—the year of the exchange of the Molina-Gual Treaty, concluded between Central

America and Colombia, in which an agreement was made to mutually respect the frontiers as they then existed—and the detailed demarcation of the fundamental law of 1825, with the subsequent demarcations down to 1848, coincide exactly; but the form of expression newly adopted, besides being more concise than that formerly employed, excelled the latter inasmuch as it rested upon direct and unquestionable international compacts.

(3) ERECTION OF THE BISHOPRIC OF COSTA RICA (1849).
ITS LIMITS.

When the diocese of San José de Costa Rica was founded by the Apostolic brief issued at Rome by His Holiness, Pius IX, on the 28th of February, 1849 (Doc. No. 290), the boundaries designated for that diocese were in harmony with the constitutional delimitation of the Costa Rican territory, as follows:

“* * * River de la Flor in the Pacific Ocean, Lake of Nicaragua, River San Juan; from thence along the Atlantic Ocean to the *Escudo de Veragua*, River Chiriquí and *thence* to the River de la Flor by the Pacific Ocean.”

It is clear that the spiritual jurisdiction of the Panamanian bishopric did not extend beyond the Escudo de Veragua on the Atlantic, or the Chiriquí Viejo River on the Pacific, when the Holy See fixed those points as the boundaries of the bishopric of Costa Rica; and upon receiving the *exequatur* of the Government of Costa Rica, the Pontifical Brief was converted into a juridical act of that Government, of immense importance—equivalent, indeed, to the most solemn and positive protest against the New Granadian occupation of *Bocas del Toro*.

No protest was ever made by New Granada against the Pontifical Brief creating the bishopric of Costa Rica with the territory mentioned, and in the exercise of the spiritual jurisdiction confided to the head of the Catholic Church in Costa Rica, the Most Illustrious and Most Reverend Doctor Don Bernardo A. Thiel, whose memory in that country will never be forgotten, visited frequently the *palenques* of Talamanca (Doc. Nos. 534-541), from the summits of the Main Cordillera—one of which bears his name—to the shores of the sea, giving religious instruction and help of all kinds to the natives. Moreover, that wise and self-denying pastor studied the various aboriginal languages, and assembled and printed vocabularies for the use of priests and teachers; he investigated the local traditions and in a thousand ways bestowed kind attentions upon those semi-barbarians in order to attract them to an orderly and religious life, and in this he was to a great extent successful.

(4) RECOGNITION OF THE INDEPENDENCE OF COSTA
RICA BY SPAIN (1850).

On her part, the mother country, Spain, in the Treaty of Peace and Friendship which was signed at Madrid on May 10, 1850 (Doc. No. 293), declared its recognition of the Republic of Costa Rica, with all the territories of which it was made up at that time, in these terms:

“ART. 1. Her Catholic Majesty * * * renounces forever * * * the sovereignty, rights and authority which belong to her, over the American territory, *situated between the Atlantic and Pacific Oceans, with its adjacent islands, known heretofore under the denomination of the Province of Costa Rica, now the Republic of the same name*, and over the other territories that may now be incorporated in said Republic.”

CHAPTER II.

THE PRINCIPLES OF "UTI POSSIDETIS" AND "INHERITANCE OF SOVEREIGNTY."

- (1) THE MEMORANDUM ON "UTI POSSIDETIS," PREPARED BY HON. JOHN BASSETT MOORE, IS SUBMITTED AND ADOPTED AS PART OF THIS ARGUMENT.
- (2) WHAT PERIOD SHOULD SERVE AS A GUIDE IN FIXING THE "UTI POSSIDETIS?"
- (3) WHAT IS THE LEGAL VALUE OF THE ADDITION OF THE TERMS "DE JURE" AND "DE FACTO," APPENDED TO THE EXPRESSION "UTI POSSIDETIS?"
- (4) CAN THE PRINCIPLE BE ADMITTED WHEN THE PARTY INVOKING IT IS NOT IN POSSESSION?
- (5) CAN THE "UTI POSSIDETIS" BE USED AS THE BASIS OF AN ACTION FOR RECOVERY?
- (6) INHERITANCE OF SOVEREIGNTY.
- (7) IS PANAMA THE HEIR OF COLOMBIA, WITH RESPECT TO THE WHOLE OF THE TERRITORY ADJUDICATED TO THE LATTER BY THE DECISION WHICH WAS INTENDED TO PUT AN END TO THE BOUNDARY QUESTION?

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- (1) THE MEMORANDUM ON "UTI POSSIDETIS," PREPARED BY HON. JOHN BASSETT MOORE, IS SUBMITTED AND ADOPTED AS PART OF THIS ARGUMENT.¹

The masterly exposition of the doctrine of colonial *uti possidetis* by the learned internationalist, Hon. John Bassett Moore, in his "Memorandum" which accompanies this Argument—and which is adopted *in toto*—would make it unnecessary to add another word to the

¹Prepared August, 1911.

subject, but for the desire to amplify certain points of mere detail as the case is developed. These points are the following:

(2) WHAT PERIOD SHOULD SERVE AS A GUIDE IN FIXING THE UTI POSSIDETIS?

From a period a few years after the Discovery, down to 1821, *Costa Rica* and *Panama* constituted an unquestionable part of the Spanish domain in America. Between Panama and Costa Rica there did not exist, nor could there be any international frontier *prior to 1821*, those provinces having been theretofore divided by a mere jurisdictional line which separated the territories of the old Royal Audiencia of Guatemala from those of the Government of Panama (previously the Royal Audiencia of Tierra Firme). However, in that year there did exist an international frontier. It was established for the purpose of separating the *Spanish territory* of the ex-Kingdom of Panama, under the name of the Province of Panama, which continued to remain loyal to the mother country, from the *territory of the Republic of Colombia* which had been constituted and organized two years before, as a sovereign and independent nation.

This axiomatic fact is found recorded upon an official map included in the *Atlas Geográfico é Histórico de la República de Colombia* (Geographical and Historical Atlas of the Republic of Colombia) published at Paris in the year 1889. Chart VIII of this atlas, which is submitted herewith (Map XXXIX) and represents the theatre of the war for independence during the period between the years 1810 and 1820, depicts with entire accuracy the possessory status as between the *Republic of Colombia* and the *King of Spain* during that period. *The new independent nation* (Colom-

bia) is shown by the yellow color; the *Province of Panama* is indicated in pink, that province being, like Costa Rica and the whole of the Kingdom of Guatemala, under the power and the sovereignty of Spain. On that map a line, formed for the most part by the Atrato River, will be observed running from north to south and separating one territory from the other. Between Panama and Costa Rica no international frontier is marked, for those provinces having constituted an undivided part of the Spanish Empire of the Indies at that date such a frontier would have been an absurdity. So that, to apply the *uti possidetis* of 1810 to the delimitation between Panama and Colombia, if they had continued to be separated as they were in 1821, might have been possible; but it was not and could not be sensible to apply such *uti possidetis* in undertaking the delimitation between *Costa Rica* and *Panama*, which provinces achieved their independence simultaneously at the close of 1821, and not before that time.

Colombia could not acquire any more land than she had conquered by her arms; this land was limited by the Atrato River, and the territories that Spain kept until 1821 (September 15 and November 28) passed, by inheritance, to Costa Rica and to Panama respectively. Such an inheritance could not be snatched from Costa Rica by a mere pen and paper conquest, whatever its nature. Central America, upon presenting itself as a sovereign entity and being admitted into the family of nations, sheltered under its standard the entire northern coast of the territory which had always been its own, and which had been received by it as an inheritance from the mother country and formed one indivisible whole, from ONE SEA TO THE OTHER. As it had been under the colonial régime, so it was in its autonomy—a coast essential for the defence of the nation's independence and sov-

ereignty and for its communications with the rest of the world.

It was impossible for Colombia to establish a claim to any part of the Atlantic coast of Costa Rica under the principle of the *uti possidetis* of 1810, because it could not be invoked, since in that year, as above stated, Panama and Costa Rica were living under Spanish dominion, and since that principle required one essential condition, which was lacking, so far as Colombia was concerned, to wit, POSSESSION. Whatever may be the value of the only title invoked by Colombia, it is an unquestionable fact that the Spanish Monarchy continued to exercise its sovereignty *until the day when the proclamation of the independence of Central America and Panama was made effective* over every integral portion of the territories of those provinces, *including their shores upon the North Sea*—a possession which was transmitted to the new sovereignties that arose out of them.

Moreover, there is a perfect equation between the territories held by the King of Spain in Central America—both in 1810 as well as in 1821—and the territories possessed by the Republic of Central America, and those which, after the dissolution of the latter, were held by the new nations that were born therefrom into an international life which has continued down to the present day. The King of Spain did not seize from Colombia, between 1810 and 1821, the Central American territory which the Central Republic took by title of inheritance upon the proclamation of her sovereignty. Spain had held it since the earliest days of the discovery, conquest and pacification of the New World; and it was kept in her possession until the Guatemalan provinces declared their independence and substituted their possession for that of Spain.

Central America, therefore, had no need to dispossess Colombia. Central America was in possession, and she so continued. This fact has been fully recognized by Colombia. It was acknowledged by M. Poincaré, her distinguished counsel before the French Arbitrator, in his Second Memorandum, p. 84, in these words, speaking of the Treaty of 1825:

"The words *domain* and *property* were intentionally used to oppose legal possession, the *uti possidetis de jure*, to the POSSESSION IN FACT, TO THE PRECARIOUS POSSESSION OF THE REPUBLIC OF THE UNITED PROVINCES OF CENTRAL AMERICA, against which Colombia protested."

It was also acknowledged by Señor Betancourt, the Special Representative of Colombia, before the Arbitrator in the *Résumé Chronologique des Titres Territoriaux de Colombie*, p. 101, referring to the Treaty of 1825, in these words:

"The words *domain* and *property* were intentionally employed to thoroughly establish the legal possession, the *uti possidetis de jure*, AGAINST THE CLANDESTINE AND PRECARIOUS POSSESSION, WITHOUT VALIDITY, OF THE UNITED PROVINCES OF CENTRAL AMERICA."

Not only Colombia's representative but her counsel also clearly recognized the fact of possession by Central America; only it was pretended that such possession was "precarious, clandestine and without validity"—all of those defects absurd in their very nature, and devoid of any meaning *inasmuch as Central American possession was one and the same with the possession of the Spanish Monarch*, against which the defects suggested are simply ridiculous.

The date of the *uti possidetis* applicable to this case was fully accepted by the Colombian negotiator, Don

Pedro Gual, in the protocol of the conferences held prior to the Treaty of March 15, 1825 (Doc. No. 256), when he said: “* * * Well, then, as to boundaries, it is necessary to hold to the *uti possidetis* of 1810 or 1820, as may be desired;” * * * only the year was stated erroneously as 1820 instead of 1821, to which the representative of Colombia undoubtedly meant to refer.

There is one perfect, conclusive and irrefutable proof that the year 1821 is the one that must be taken for the fixing of the *colonial uti possidetis* in the present controversy, and that is the unequivocal and repeated recognition which the Republic of Colombia has officially made of the correctness, legality and fitness of the doctrine that Costa Rica maintains in that respect. The evidence of this is found in the documents submitted by the Republic of Colombia to the Arbitrator in the former litigation, among which a volume was included, entitled, *Résumé Chronologique des Titres Territoriaux de Colombie*; and this was cited in the Award of September 11, 1900. Its author was Señor Don Julio Betancourt, the Special Representative of Colombia before the Arbitrator, although his authorship does not appear in the volume itself. However, upon pages 98 and 99 of that book are presented as proofs, in favor of Colombia, certain documents belonging to the years 1815, 1816, 1817 and 1819, showing acts of authority by the mother country over the whole of the Isthmus of Panama, and, specifically, over the Province of Veragua, a portion of the Isthmus which, as above shown, was at that time fully and unequivocally a dependency of Spain. It is absolutely impossible to reconcile the invocation of such facts and documents with the fixing of the year 1810 as the basis for the *uti possidetis* between Costa Rica and Colombia. Furthermore it is a historical fact which can-

not be questioned, that in 1820 and 1821 the Province of Panama had a Deputy in the Spanish Cortes, as also had Costa Rica.¹

As the independence of Costa Rica and that of Panama were not proclaimed upon the same day, inasmuch as the first took place on the 15th of September and the second upon the 28th of November, in the year 1821, it happened that, in the short space of time that elapsed between one date and the other, the divisional line between Costa Rica and Panama, which separated the territory of the *independent* state of Costa Rica from the Spanish territory belonging to the colonial province of Panama, was raised from a mere jurisdictional boundary to the status of an international frontier; and it was not until after the time the latter ceased to be a colony that Colombian territory began to border upon Costa Rica; this it did by the fact of Panama's union with the Colombian Republic—an act which might not have occurred and, according to the documents of that period, was even on the point of not being consummated. Now, the divisional line that separated the territories of *Costa Rica* and *Panama* in 1821, under the colonial régime, and the one that separated thereafter the free state of Costa Rica from the Colombian Department of Panama, under the régime of independence, was the same identical line, without the slightest deviation; this is demonstrated *a priori* by the consideration that, within the lapse of a few hours, while the future republics passed from the condition of *colonies* to that of *independence*, it was not possible that any change could have occurred in their boundaries.

¹Hubert Howe Bancroft, *History of the Pacific States of North America—Central America*, vol. III, Chapter XXIV. San Francisco, 1887. León Fernández, *Documentos para la Historia de Costa Rica*, vol. X, p. 576. Barcelona, 1907.

As the emancipation of the greater part of the colonies of *South America* was mainly due to the movements initiated in 1810, by common consent that year was fixed upon as the basis for the possessory holdings by the new international entities into which the Spanish Empire was divided on that continent. But one of the new republics—that of Peru—never consented to that date, inasmuch as her independence was initiated in 1820 and was not assured until 1824. Concerning this point there was a special discussion in the Congress at Lima of 1847. The plenipotentiary of New Granada, in accord with those of Chile and Bolivia, submitted to the Congress a treaty for the recognition, among other things, of the principle of the *uti possidetis* of 1810; but the plenipotentiary of Peru submitted another plan, based upon the *uti possidetis* of 1824. The difference was arranged by substituting for the discordant dates the more comprehensive and exact expression—

“The confederated republics declare their perfect right to preserve the frontiers of their territories, as they existed at the time they became independent of Spain, of the respective Viceroyalties, Captaincies-General or Presidencies into which Spanish America was divided. * * * The republics which, having been part of a single State at the proclamation of independence, were separated after 1810, shall keep within the limits with which they were recognized, without prejudice to the treaties concluded or that may be concluded to vary or perfect them *in conformity with the present Article.*”

The mention of the year 1810, as will be seen, refers only to the case of the division of a state, after the movement for independence began; in principle the basis adopted was the *time of independence*.

This was the rational thing to do, as will be evident from the following citation, which is taken from a legal opinion subscribed by the eminent Spanish advocates, Señores Don Eugenio Montero Ríos, Don Gumersindo de Azcárate, Don Rafael M. de Labra, Don Nicolás Salmerón y Alonso, Don Eduardo Dato and Don Rafael Conde y Luque:¹

“The beginning of *colonial jurisdiction* and of *colonial titles*, as one but not the only determining factor for the delimitation of the present Spanish American nations, is generalized and appears as a matter current throughout Latin America. Therefore it is not peculiar to Peru and to Ecuador; and it consists in alleging that the limits of the present nations (in general terms and saving the modifications introduced later by other facts more or less legal) are or ought to be those the Old Viceroyalties had at the time the American independence was promulgated.

“In order to make this point clear, there has been more than one discussion in Latin America as to what was meant by ‘old Viceroyalties,’ and what was the ‘moment’ of independence to which allusion was made. Peru and Ecuador have just been discussing it. Colombia and Peru argued it, from 1822 to 1829; Colombia and Venezuela before, and Colombia with Costa Rica; Chile with Buenos Aires and Peru with Bolivia. The Republics of Central America discussed it among themselves, and even Peru and Colombia with Brazil. This is the theme that has constantly been under discussion, down to this very time, by the American publicists and governments, on one side, and the supreme arbitrators chosen during the last thirty years in the New Latin World to settle various questions that have been upon the carpet and that have arisen to occupy and strongly interest the transatlantic countries.

¹Arbitraje de Límites entre El Perú y El Ecuador. Dictámenes Jurídicos presentados á S. M. el Real Arbitro con la Memoria del Perú, Madrid, 1906, p. 34.

"From the debates recently had upon the subject, happily the view arrived at was not that the Viceroyalties under discussion were the *primitive* ones; that is to say, for example, Peru and New Spain in the 16th century; nor the other two constituted in the 18th century, or New Granada and Buenos Aires, considered at the moment or in the course of their formation.

"The Viceroyalties to which allusion is made are and must necessarily be those that existed and AS THEY EXISTED AT THE TIME OF THE DESTRUCTION OF THE COLONIAL BOND. Nothing else is an explanation. There is something positive in this reference, it being impossible to suppose that the American States, at the time of being constituted and for their mutual recognition, would bring upon the carpet *the complicated and confused problem of their historical formation*. The point of departure for their territorial delimitation had to be something fixed, near at hand, visible and palpable; that is to say, what the colonies were physically *at the moment of being transformed into independent nations*, and successors, in their respective territories, of the Spanish sovereignty. Therefore, in all the documents which take up this matter in one way or another, the 'old' Viceroyalties are spoken of and not the 'primitive' ones."

This conclusion of the very eminent Spanish jurisconsults quoted is in accord with the universal doctrines on the subject of *uti possidetis*.

Wheaton says:

"The treaty of peace leaves everything in the condition it was before; unless there is an express stipulation to the contrary. The existing state of possession continues, except as it is altered by the terms of the treaty. If nothing is said regarding the countries or peoples conquered, they are left to the conqueror and his title cannot thereafter be contested. While the war continues, the conqueror in possession only

has the right of usufruct, and the latent title of the old sovereign subsists until the treaty of peace, either by its silence or by express provision, extinguishes the title forever. The *uti possidetis* is the basis of every treaty of peace, save by express stipulation to the contrary."

(Wheaton's Elements; Lawrence's Ed., 1863; pp. 878, 882, 886.)

In full accord with the foregoing doctrine Lawrence says:

"As between the belligerent powers themselves, it is held that the conclusion of peace legalizes the state of possession existing at the moment, unless especial stipulations to the contrary are contained in the treaty. This is called the principle of *uti possidetis*, and it is of very wide and far-reaching application. Arrangements that seem at first sight to be pedantic in their minuteness, are often necessary to carry out the intentions of the parties in the face of the rule that, when there are no express stipulations to the contrary, the principle of *uti possidetis* prevails."

(Lawrence, Principles of Int. Law, 4th Ed., 1910, pp. 571-572.)

The war for independence ended in fact upon the firm and irrevocable establishment of the Republics of Central America and Colombia; but the treaties of peace did not come until many years later. That of Costa Rica is dated in the year 1850, and as regards her territory the treaty declares that it reached *from sea to sea* and extended over the entire area that belonged to the old Spanish province of that name. In the one made with Colombia there was no territorial description. It is, however, evident that each of the new entities retained and kept forever—in its entirety as it stood at the last moment of the Spanish domination—the territory of its colonial pred-

ecessor. Demarcations not in effect at that last moment of the colonial régime, might form the subject of learned disquisitions of a purely historical character, but in the purview of international law, and for the practical purpose of the physical marking out of the frontiers of the new states, they have no value, for the newly born states arose as the expression of an actual reality—present, effective, visible and tangible—and not of the multitude of historical facts that had slowly prepared the way for their final evolution during the course of several centuries.

One of the most noted opinions, of Colombian origin, that can be cited upon this subject is that by Señor F. de P. Borda, who, by order of his government, made a complete investigation of the question concerning the boundaries of Costa Rica and Colombia. This author defines the *uti possidetis* as follows:

"The territorial domain will be limited by frontier lines traced in conformity with the Royal Spanish dispositions concerning colonial divisions IN FORCE AT THE TIME OF THE EMANCIPATION OF THE COLONIES."

Señor Borda accepts as a frontier basis the colonial division in force at the moment of the emancipation of the colony; not the *past* or *historic* division, but the present and actual division, coincident with its emancipation.

Señor Silvela, the distinguished counsel for Colombia, likewise accepts this principle in his brief, when in the opening paragraph of its first page he says:

"Both [Costa Rica and Colombia] admit that their boundaries should be the same that the Spanish Monarch fixed, pursuant to the Laws of the Indies and other Royal Resolutions, for the Viceroyalty of Santa Fe of the New Kingdom of Granada and for the Captaincy-General of Guatemala, AT THE EPOCH OF THE INDEPENDENCE OF THE NEW STATES.

"Such is the *uti possidetis de jure*, a principle proclaimed by Colombia after her emancipation, as a sure means of realizing with the utmost peace and concord the delimitation of those territories which formerly belonged to Spain."¹

Entirely in harmony with this principle is the declaration contained in the circular that Señor Zea, the Colombian Minister, by the order of his government, addressed to the principal powers and sent out from Paris on April 8, 1822 (Doc. No. 249), when he was seeking recognition of the independence of his country. In that memorable document he used these words:

"The Republic of Colombia has every characteristic of all the recognized governments upon earth; *she does not ask of any of them by what means, or by what right, they have become what they are:—they exist; this is all that concerns her to know. Colombia respects all that exists; she has a right to reciprocity; she demands it; and this demand is dictated neither by interest nor by fear; either one motive or the other is unworthy of a generous and free nation.*"²

¹"Toutes deux admettent que leurs limites doivent être les mêmes que le Monarque Espagnol avait fixées, d'après les Lois des Indes et d'autres Résolutions Royales, à la Vice-Royauté de Santa Fé du Nouveau Royaume de Grenade et à la Capitainerie Générale de Guatemala, À L'ÉPOQUE DE L'INDÉPENDANCE DES NOUVEAUX ÉTATS.

"Tel est l'*uti possidetis de jure*, principe proclamé par la Colombie lors de son émancipation, comme moyen sûr de réaliser, au sein de la paix et de la concorde, la délimitation de ces territoires qui, jadis, appartenrent à l'Espagne." (SILVELA: Exposé, p. 1).

²Colombia: Being a geographical, statistical, agricultural, commercial and political account of that country, adapted for the general reader, the merchant and the colonist; pp. XXIII and XXIX. London, 1822. Published by Baldwin, Cradock and Joy.

(3) WHAT IS THE LEGAL VALUE OF THE ADDITION OF THE TERMS "DE JURE" AND "DE FACTO," APPENDED TO THE EXPRESSION UTI POSSIDETIS?

These additions are novel and it is difficult to justify their use, inasmuch as *possession*, which constitutes the spirit and the essential element of the principle stated, must be real and effective and must have been acquired by proper means, including that of a just war; and this being so, the distinction sought by the qualifications of *de facto* and *de jure* would appear to serve only to produce a confusion of ideas.

In private law the possession which serves as a basis for the *uti possidetis* must be free from the defects of violence, nor can it be clandestine or precarious. In international law there is more laxity and it is sufficient if the possession be effective. Generally it is sanctioned by the treaty of peace that follows, either by confirmation in express terms or tacitly. But when no war intervenes and occupation occurs without being expressly sanctioned by a subsequent treaty, such occupation must always partake of a precarious character; and upon this the *uti possidetis* cannot be founded. If it is desired to use the term with the addition of the words *de facto*, it is better to deny to such occupation the character of *uti possidetis*; in such case there is no object in adding the words *de jure* by way of contrast with the false principle of *uti possidetis de facto*, except it be sought to confuse and identify the *uti possidetis* called *de jure* with the *title of ownership or sovereignty* over a given territory; but that is to involve ideas that should be kept quite distinct; that is to say, *dominion*, on the one hand, and on the other *possession*.

If some jurisconsult had invoked before the Roman Praetor the interdict of *uti possidetis de facto*, it is very

certain such an expression would not have been intelligible. Coming down the ages, neither could these terms of *de jure* and *de facto* be understood between the negotiators for a treaty of peace, appointed to settle the possessory state in which the belligerents may have been left at the termination of the war. In the discussions between Great Britain, Spain and France, when the matter of fixing the frontiers of the American republic, bordering upon the three Powers mentioned, was under discussion, it never occurred to any one to employ phrases so entirely without precedent. It was much later when such expressions were first used; and the result has been such a confusion of ideas that many South Americans have come to mingle in a single conception the *possessory principle* and the legal idea of *title by dominion*. The European and North American jurisconsults have always uniformly repudiated these additions.

Saving, however, the redundancy and the danger of confusion, there is no objection to keeping the additions, provided always that the due distinction be preserved between the official character of the *possessory principle* and that of the *title by dominion*.

(4) CAN THE PRINCIPLE BE ADMITTED WHEN THE PARTY INVOKING IT IS NOT IN POSSESSION?

To state this question is to answer it, for it is inconceivable that any one who is not in possession, which, as has been stated, is the spirit and essential element of the *uti possidetis*, can take advantage of what he begins by acknowledging has no existence. One cannot get something out of nothing. The party who finds himself in such a situation may be supported by the most ample, clear, and perfect rights, and by virtue thereof he may be entitled to an unquestionable victory in the contest; but such a

triumph, if attained, would not be due to the advantage of the *uti possidetis*—a remedy in its very character secondary and supplemental. He will prevail rather by his original, basic and invulnerable titles, attesting his right of ownership and sovereignty.

Any one who had such titles at his disposal would not trouble himself to seek a supplemental remedy, the use of which was interdicted by the lack of possession; but if he did endeavor to make it of use, his action would show the scant confidence he felt in his titles.

In the contest as to boundaries between Costa Rica and Colombia, both parties have legally been able to invoke in their favor the doctrine of *uti possidetis*; but this has been only with reference to *the territories held*, respectively, by one or the other of these republics. In the same way, they have been able to invoke their respective titles of sovereignty, *disregarding the possessory element*, and of course saving the stipulations of treaties. But each of these elements of defense and attack can only be made use of within their respective spheres.

The sole reason for Colombia's attempt to confuse this principle by the addition of the words "de jure" was to lay the foundation for a claim to the littoral of Costa Rica, between the mouth of the Culebras River and that of the San Juan, which has always been in the possession of Costa Rica and not of Colombia.

(5) CAN THE UTI POSSIDETIS BE USED AS THE BASIS OF AN ACTION FOR RECOVERY?

It is clear that any one who has the advantage of the *uti possidetis*, for that very reason has no need of an action of recovery. Why should one institute a proceeding for the delivery of that which he holds in his own hand? The error here had its origin in the false conception of the equivalence of the title of dominion, devoid of possession,

and the principle of the *uti possidetis*, which is inconceivable without it. It may well be that Colombia, in the case under discussion, will invoke the doctrine of *uti possidetis* for the purpose of retaining possession of all those territories of which she can be shown to be in the actual possession; but it is very evident that territorial recoveries of lands she does not possess can only be achieved by virtue of unquestionable titles of ownership. Very far from unquestionable were the basic titles exhibited by Colombia in the late litigation, namely: the Royal cédula of March 2, 1537 (Doc. No. 13), and the Royal order of November 20, 30, 1803 (Docs. Nos. 191, 192). These titles were rejected as having no application to the Costa Rican littoral, and the award to Colombia of a small portion of the territory which was claimed as covered by them was made under a mistake of fact as to actual possession.

Summing up what has already been said, it may be asserted that it is amply demonstrated that the date which must be adhered to for the determination of the possessory status, to be used as a guide in fixing the frontiers of Costa Rica and Veragua, is a date falling within the last months of the year 1821, since it was not until the 15th of September and the 28th of November of that year that the aforesaid adjoining provinces—the former the extreme eastern extension of the Kingdom of Guatemala and the latter the western limit of the New Kingdom of Granada—broke the bonds that tied them to the mother country and assumed the rôle of independent states.

Until that transformation took place both provinces constituted a single Spanish territory, across which a more or less certain and unquestionable line separated mere simple jurisdictions of servitors of one and the same sovereign. If under such a condition of affairs there had sprung up any difference as to frontiers, that difference

would have been settled as a mere question of jurisdiction between two colonial officials, under the laws of the Spanish Monarchy, without any significance of any sort being attached to the call for independence sent forth from Bogotá, in 1810; or to the organization of the Republic of Colombia decreed by the Congress of Angostura in 1819; or to the definitive Constitution of Cúcuta of 1821, inasmuch as it was not until the 28th of November in that same year that Panama separated herself from Spain, and up to that day she constituted internationally one of the Spanish dominions of America. From that time forward, the question at issue was converted from a colonial into an international question; and then it was not a question between Costa Rica and Veragua or Panama, but between Central America and Colombia—and this with respect to the divisional line between the said provinces of Costa Rica and Veragua or Panama. The Mosquito question never affected the colonial Costa Rican territory which, since 1573 (Docs. Nos. 62 and 63), never extended beyond the San Juan de Nicaragua River, and to the northern border of which the Mosquito territory never reached.

If such a case of jurisdiction, as above suggested, had ever arisen between the Guatemalan and New Granadian authorities under the colonial régime, the local Costa Rican officials would have been quite disinterested in the controversy; and they were in the same position after independence, since the territory of the Spanish Province of Costa Rica and that of the independent State of that name was always one and the same, without the least alteration.

(6) INHERITANCE OF SOVEREIGNTY.

It is a principle universally admitted, that when a colony gains its independence, it gains at the same time so much

of the territory covered by it under the old sovereign as is wrested from his possession. To this succession of territorial dominion has been applied the term "*inheritance of sovereignty*."

In the succession now referred to there really are many aspects of a hereditary right, such as the extinction of the predecessor and the entrance of a successor, the universality of heirship of the things that are the subject of transmission, the instantaneous character of the transfer, etc. There is also much of the conventional consequences of death, especially the compulsory loss of the lordship; so that for want of a better or more accurate expression it has been called the *inheritance of sovereignty*.

The fact is that at a given moment the old sovereignty disappears and for it there is substituted the new one; as, for example, when the rule of the Monarchy of the Indies was ended and there arose a group of republics. The community where the evolution is carried out is of course the same; but the supreme power having charge of its administration is changed by the effect of such evolution. Still, as the community does not change, neither is there any change in the territory within which it is located, and to which it is bound by indissoluble ties growing out of its history. The territorial limits of the new state are, therefore, exactly the same as those which previously bounded the old colony, unless some portion of it remains loyal to the old sovereignty or some change is made by the will of the peoples themselves, who may elect to erect one portion into a state by itself or unite with another state of which it had not before formed a part.

The principle according to which the new independent entity shall keep the territorial limits which circumscribed

it when it was a colony had its most important application in America in the treaty of peace concluded between the United States and Great Britain, and it was upon this basis, arrived at in that treaty after very tedious negotiations, that the frontiers were laid out by common accord.

The Secretary of State, Mr. Marcy, in a note to Mr. Dallas, dated July 26, 1856 (Senate Ex. Doc. No. 74, 58th Congress, Second Session), expressed himself on this subject as follows:

“The United States regards it as an established principle of public law and of international right that, when an European colony in America becomes independent, it succeeds to the territorial limits of the colony as it stood in the hands of the parent country. That is the doctrine which Great Britain and the United States concurred in adopting in the negotiations of Paris, which terminated this country’s war of independence. It has been followed by Spain and Portugal in regard to their former colonies in America and by all those colonies as between one another and the United States. No other principle is legitimate, reasonable or just.”

In the report submitted by the eminent Mr. Lawrence to Secretary Clayton (Doc. No. 629), are found the following paragraphs:

“When the negotiations were opened for terminating the War of the Revolution, Congress instructed Dr. Franklin and his associates to insist upon the Mississippi as our western boundary, which they did successfully, though opposed by both the French and Spanish courts. It is worthy of remark, that each party insisted upon the principle that *the boundaries of the new States were to be determined by the colonial limits*. During the negotiations it was asserted, and

maintained by the successful result, that the Indians between the river and the mountains were not independent nations, but existed under the protecting sovereignty of the United States.

"I think nothing can be clearer than that these examples establish two general principles, which, combined, determine this whole question: first, that the successful revolt of a colony does not change its political geography; and, second, that the Indian gains no right of domain by such revolt.

"The Spanish claim rested on the romantic exploits of early adventurers and settlers, who established and maintained it under well-defined principles of public law. The King of Spain had no rights there as King of Spain. His title grew out of his sovereignty over Guatemala; and when that sovereignty ceased, the rights incident to it passed into the new dominant power as absolutely as did the dominion of Holland pass into the States-General, or the sovereignty of Portugal into the House of Braganza. It was the discoverer who won, and the settler who retained, the title; and when they severed this title from the Spanish Crown, and became sovereigns in the place of subjects, of right, necessity and by precedent, they became possessed of that which had vested in the crown only through them."

This doctrine had as a precedent the instructions given by the Congress of the United States, which are referred to in one of the passages quoted, and which may be found in "Foreign Relations," Vol. VI, pp. 867-868. The important paragraphs read as follows:

"With respect to the first of these articles, by which the River Mississippi is fixed as the boundary between the Spanish settlements and the United States, it is unnecessary to take notice of any pretensions founded on a priority of discovery, of occupancy or on conquest. It is sufficient that, by the definitive Treaty

of Paris of 1763, article seventh, all the territory now claimed by the United States was expressly and irrevocably ceded to the King of Great Britain; and that the United States are, in consequence of the revolution in their Government, entitled to the benefits of that cession.

"The first of these positions is proved by the treaty itself. To prove the last, it must be observed that it is a fundamental principle in all lawful governments, and particularly in the Constitution of the British Empire, that all the rights of sovereignty are intended for the benefit of those from whom they are derived, and over whom they are exercised. It is also known to have been held for an inviolable principle by the United States, while they remained a part of the British Empire, that the sovereignty of the King of England, with all the rights and powers included in it, did not extend to them in virtue of his being acknowledged and obeyed as King by the people of England, or of any other part of the Empire, but in virtue of his being acknowledged and obeyed as King of the people of America themselves; and that this principle was the basis, first of their opposition to, and finally of their abolition of, his authority over them. From these principles it results, that all the territory lying within the limits of the States, as fixed by the Sovereign himself, was held by him for their particular benefits, and must equally with his other rights and claims in quality of their Sovereign, be considered as having devolved on them, in consequence of their resumption of the sovereignty to themselves.

"In support of this position it may be further observed, that all the territorial rights of the King of Great Britain within the limits of the United States accrued to him from the enterprises, the risks, the sacrifices, the expense in blood and treasure of the present inhabitants and their progenitors. If in latter times expenses and exertions have been

borne by any other part of the Empire in their immediate defence, it need only be recollected that the ultimate object of them was the general security and advantage of the Empire; that a proportional share was borne by the States themselves; and that if this had not been the case the benefit resulting from an exclusive enjoyment of their trade have been an abundant compensation. Equity and justice, therefore, perfectly coincide, in the present instance, with political and constitutional principles."

This was the basis that was used in the arrangements made by the Spanish-American states among themselves as to their frontiers after they had achieved their independence.

It may be said that as to the general principle all opinions are unanimous; if there are any divergences they are only in regard to points of mere detail.

There are difficulties which must be met when coming to the application of the doctrine to the cases that arise, but before proceeding to their discussion it will be well to consider the situation in which the colonies of Guatemala, New Granada and Panama found themselves as a result of the war for independence. The effect of the call for independence, of 1810, was to break up, *in fact*, the *unity of the Viceroyalty* of Santa Fe, leaving it divided into *two sections*. One of these sections embraced the New Granadian provinces properly so called, which proclaimed and victoriously obtained their independence, and were united, in 1819, to those of Venezuela for the purpose of forming the *Republic of Colombia* with a *well-defined territory*. This was contiguous to the *other section*, or the *Kingdom of Panama*, which continued to be subject to Spain. The union of Panama with the Viceroyalty of Santa Fe was certainly not of very long standing; nor was it ever a very

close one, on account of the enormous distance at which the capital was located from the Isthmus.

The second section, having also a *defined territory*, was a Spanish territory when Colombia was already a sovereign and independent nation, so that, in 1819 and in 1820, Colombia had *only Spain upon her western border*. And this part of Spain (under the denomination of the "Kingdom of Panama") was bounded on the east by the Republic of Colombia and on the west by *another part of Spain called the "Kingdom of Guatemala."* The Republic of Central America had not then begun its international life; but when it did start, at the close of 1821, it had for a short time as its eastern bordering country, not the Republic of Colombia, which had not yet embraced Panama, but *the Spanish territory of that name*, which shortly afterwards became independent, and on the 9th of February, 1822, was merged in the Republic of Colombia. The acts of the Spanish Government, down to the latter part of 1821 bound the states of Costa Rica and Panama, uninfluenced in any way by the circumstance of the prior neo-Granadian emancipation, proclaimed in 1810.

- (7) IS PANAMA THE HEIR OF COLOMBIA, WITH RESPECT TO THE WHOLE OF THE TERRITORY ADJUDICATED TO THE LATTER BY THE DECISION WHICH WAS INTENDED TO PUT AN END TO THE BOUNDARY QUESTION?

To this an affirmative response is given at once, *limited*, however, to the territories which, during the Spanish domination, *formed the Province of Panama* and which at that period constituted a perfectly well-defined colonial entity; but the heirship is denied, as regards those territories of which Colombia claimed the sover-

eignty in this litigation, based upon the Royal order issued on November 20, 1803, for the very cogent reason that the contested aggregation of the Mosquito Coast pertaining to the Captaincy-General of Guatemala, which is presumed to have been made in favor of the Vice-royalty of Santa Fe, was expressly granted so that the protection of the said Coast and the adjacent Islands of San Andrés *should become immediately dependent, not upon the Province of Panama, but upon the Province of CARTAGENA.* This appears by the Royal order, which approved and directed the prompt execution of the provisions contained in the "Reports of the Board of Fortifications and Defense of the Indies," issued on September 2 and on October 21, 1803 (Doc. Nos. 189 and 190).

In those reports, which were approved and directed to be carried out, the Island of San Andrés was made the *headquarters* of the Mosquito Coast, under the specific command of its Governor, Don Tomás O'Neill; and it was also provided that the latter should *receive orders* and obtain assistance of every sort from the *Comandante of Cartagena*, to whom the Supreme Chief *Viceroy of Santa Fe* would give full instructions and ample powers for the civil and military administration of the Islands of San Andrés and of the Mosquito Coast, that viceroy being unable to give them directly by reason of the distance. Even in ecclesiastical matters it was ordered that the Bishop of Cartagena should furnish to the new establishments the necessary spiritual assistance, give them a priest and undertake especially the construction of churches and provide for their decoration.

The Government of Panama *was absolutely foreign* to all of these arrangements, and, therefore, it *never interfered* in any matter having relation to the Islands of San Andrés

or the Mosquito Coast, by virtue of the provision in the Royal order of 1803; it had no more to do with those territories than the other provinces which made up the Viceroyalty of Santa Fe. Consequently, when O'Neill undertook to give up the island, in 1806, by a capitulation to the arms of Great Britain, he addressed his report on that subject to the *superior authority of Cartagena*; and it was from Cartagena that the decisions of the Council of War came to refrain from any attempt to reconquer the archipelago.

Even if it be admitted, *arguendo* that, by reason of the Royal order of November 20, 1803, Colombia had any right, after revolting from Spain in 1810 or after the revolt of the other provinces in 1821, to deprive Nicaragua of its eastern shores, in part called "Mosquito Coast," *Colombia and not Panama would have that right to-day*, as relating to a dependency of the old *Province of Cartagena*, which is the present Department of Bolívar and forms an integral part of the territory of that Republic. The *secession of Panama* could not change that state of things, for the reason already stated, that the Colombian province of that name never had any connection of any kind with those shores. The proof of this lies in the fact that Panama never has attempted to set up any claim of territorial sovereignty over the Archipelago of San Andrés, the dominion and possession of which Colombia retains, *in every way and for all purposes* independently of the emancipated province which is *now the Republic of Panama*.

When Panama asserted, in its Constitution of 1904, that the insular territory adjudicated to Colombia in the Loubet Award formed a part of its possessions, it inadvertently committed an error, which, in practice, was corrected by the interpretation actually given, whereby it was understood that the constitution referred *only* to the

insular territory adjacent to the coasts of the state. It does not appear whether that interpretation has any authentic character; but in consulting the "Geografía de Panamá" (third edition, 1909) written by Dr. Don Ramón R. Valdés, who was Attorney-General of the nation, and later the Minister of Panama in Washington—a work officially adopted as a text-book in the schools of the Republic under the certificate issued December 13, 1905 (Doc. No. 623), by Don Nicolás Victoria J., Secretary of Public Instruction and Justice of the Republic of Panama—it may be observed that notwithstanding the large number of islands, islets and banks referred to at length on pages 9 to 13, occupying an area of 7,300 square kilometers in both oceans, no mention is made of the aforesaid Islands of San Andrés. Likewise, in the description of the coasts of the republic (p. 3), extending 817 kilometers and 500 meters along the Atlantic, no mention is made of the *Mosquito Coast*.

On the other hand, Panama can speak and act, but Colombia must keep silence forever as to everything that relates to the common frontier of the old Provinces of Costa Rica and Veragua, because these constituted during the rule of the Spanish Monarchy distinct colonial entities, coterminous and the extremes, respectively, of the two great administrative entities known as the Captaincy-General of Guatemala and the Viceroyalty of Santa Fe.

There always was and there still exists a question as to boundaries between Costa Rica and Panama, a question which will be terminated when the line of separation between the old Spanish provinces that now constitute the contending republics is fixed in an incontrovertible manner. But the territorial recoveries contemplated by Colombia, as successor to the Viceroyalty of Santa Fe, covering the

Central American territory known under the name of the "Mosquito Coast," are matters as to which the present Panamanian nation, for want of any interest and right, lacks, in the language of the forum, the personality *ad causam*.

The right and interest which Panama never had in the "Mosquito Coast" she could not acquire by the proclamation of her independence; inasmuch as, in accordance with the unquestioned principles of the law of nations, her independence could only give her sovereignty over those territories which at the moment of the declaration were an integral portion of the provincial or departmental territory that launched and maintained the demand for independence; that is to say, her right to govern herself, detached from her old central authority.

If what has been stated is correct—and it is not susceptible of contradiction—the conclusion is irresistible and logical that the present Republic of Panama, with respect to the territory situated to the northwest of the Culebras River, cannot invoke the title of an heir of Colombia for the purpose of claiming the sovereignty of those territories held by Costa Rica.

The pretended rights of Veragua and Panama absolutely end at the Culebras River. Toward the northwest of that river, pretended claims are set up, but whether they are called the rights of New Granada, or of Cartagena, or of the Department of Bolívar or of Colombia, they have no other basis or origin than the Royal order of 1803, and in no way affect, either for or against, Veragua or Panama, whether as a Spanish province or as a state adhering to the Colombian nation, or as an entity independent thereof.

The foregoing premises having been stated and logically demonstrated, it is clear that no harm would be done, to Panama by interpreting the Loubet Award in the sense that the frontier *does not extend beyond the real Culebras River*, toward the northwest, inasmuch as the Panamanian territory would receive, under such an interpretation, the full expansion to which Panama could aspire under the fullest and most favorable understanding of her titles. It would simply mean that Panama had failed to obtain or acquire an undue enlargement resulting from a patent and manifest legal error, committed to the prejudice of Costa Rica and in favor of Colombia—a nation which never ventured to demand any territory beyond the Culebras River until after Costa Rica had agreed to arbitration, and was not entitled to have adjudicated to it, as a gift, lands it had no right to demand.

CHAPTER III.

TREATY OF BOGOTA, BETWEEN CENTRAL AMERICA AND COLOMBIA.

- (1) COLOMBIAN DECREE OF JULY 5, 1824, CONCERNING THE MOSQUITO COAST.
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- (1) COLOMBIAN DECREE OF JULY 5, 1824, CONCERNING THE MOSQUITO COAST.

A few days after the law for her territorial division had been published by Colombia, the Executive Power of that Republic issued the Decree of July 5, 1824 (Doc. No. 252), in which it is stated that—

“There is declared illegal every enterprise which is undertaken to colonize any point of that portion of the Mosquito Coast, from Cape Gracias a Dios inclusive *toward* the River Chagres, which belongs in dominion and property to the Republic of Colombia, in virtue of the formal declaration made at San Lorenzo on November 30, 1803, by which the said part of the Mosquito Coast was definitively added to the old Viceroyalty of New Granada, separating it from the jurisdiction of the Captaincy-General of Guatemala, *to which* it previously belonged.”

By this disposition Colombia undertook to instill life into the above-mentioned Royal order which had died still-born, to which no one paid any attention during the colonial epoch, and the invalidity and ineffectuality of which, as regards Costa Rica, are conclusively demonstrated in the opinion of Señores Moret and Santamaría de Paredes, which is submitted herewith as part of this Argument. It is worth noting that, the Colombian Congress having, ten days before, issued the law for territorial division in which it was expressly declared that the "*whole territory of the Nation*" was included within its provisions, that law was wholly inconsistent with the assertion of the claim to dominion over the Mosquito Coast which served as the basis for the Decree of July 5 above referred to. The said Mosquito Coast could only have formed a part of the Department of Magdalena, which was designated as the seventh in the list of the twelve departments into which the *whole of the Colombian territory* was divided by the law of June 25, (Doc. No. 251), and which was composed of the Provinces of Cartagena, Santa Marta and Río Hacha. With these two last-named provinces the said Coast never had any connection, and that it had no connection with the Province of Cartagena is evident from the fact that among the fifteen cantons in the latter province the Mosquito Coast does not appear, as will be seen by the following enumeration quoted from the aforesaid law:

"Cantons of the Province of Cartagena: 1. Cartagena; 2. Barranquilla; 3. Soledad; 4. Mahates; 5. Corosal; 6. El Carmen; 7. Tolú; 8. Chinú; 9. Magangué; 10. San Benito Abad; 11. Lorica; 12. Mompox; 13. Majagual; 14. Simití; 15. Islands of San Andrés."

That the Mosquito Coast did not form a part of the Department of Panama, made up as it was of the Provinces

of Panama and Veragua, is evident from its omission from among the cantons of those provinces, which are enumerated in that law, as follows:

"Of Panama: 1. Panama; 2. Portobelo; 3. Chorreras; 4. Natá; 5. Los Santos; 6. Yavisa;
 "Of Veragua: 1. Santiago de Veragua; 2. Mesa;
 3. Alanje; 4. Gaimí."¹

Nor does the Mosquito Coast appear in any of the subdivisions of the remaining ten departments of the Colombian territory. As a proof of this a table is submitted herewith embracing all of the cantons of the Colombian territory (Table No. 1).

Having in view these antecedent facts, the Executive Decree of July 5, in open contradiction to the territorial law of June 25, has no value, and constitutes a mere bald assertion, internationally unproductive of results.

This was the first, and an abortive effort made by Colombia to lay the foundation for a claim to a portion of the eastern coast of Central America. The second attempt was a proposition for the exchange of a portion of that coast for territory admittedly belonging to Costa Rica, from the Lake of Nicaragua to the Gulf of Dulce. That proposition was made, as the basis of a boundary treaty, by the Colombian Minister, Señor Gual, to the plenipotentiary of Central America, Señor Molina, at a conference preliminary to the Treaty of March 15, 1825 (Doc. No. 256), and was promptly rejected by the Central American negotiator. This second attempt was frustrated by the Treaty of Bogotá.

¹The original text says *Gaimí* instead of *Guaimí*.

(2) PROTEST OF CENTRAL AMERICA. PROTEST OF
COSTA RICA.

As soon as the Decree of July 5 was brought to the knowledge of the Central American Government, that government hastened to make a solemn protest, which appears in the Report submitted to the Congress of the Federation on March 5, 1825 (Doc. No. 477), by the Minister of Foreign Relations, Don Marcial Zebadúa, in which he said:

"In the periodicals of the Republic of Colombia a decree by its government has been published, issued on July 5 last, in which, referring to the news that some foreigners are planning to locate establishments in the territory called Poyais, upon the Mosquito Coast, and for the purpose of preventing such enterprises from being carried out, it is stated that *the coasts from Cape Gracias a Dios toward the River Chagres, belong in dominion and ownership to that Republic, in virtue of the declaration made at San Lorenzo on November 30, 1803; and that by it that portion of the coast was definitively added to the old Viceroyalty of New Granada, separating it from the old Captaincy-General of Guatemala.*

"The Executive Power was surprised to see this declaration by the Government of Colombia. THE TERRITORY SPOKEN OF HAS BELONGED CONTINUOUSLY TO GUATEMALA AND HAS BEEN IN ITS POSSESSION. In the law passed by the Senate and House of Representatives of Colombia on the 23d of June last, relating to the division of its territory, THE MOSQUITO COAST IS NOT EMBRACED; and in the note of July 29, by which the Minister of State forwarded the aforesaid decree to the Intendant of Magdalena, IT IS POSITIVELY STATED THAT IT DOES NOT BELONG TO COLOMBIA.

"Moreover, our envoy near that Republic, in his communication of September 28, says, in relation to this matter, that he had been assured the Government of Colombia had no idea other than to prevent the location of establishments upon the coast mentioned. Our Minister has remained there so as to inform himself in the matter upon his arrival at Bogotá and declare the rights of the Republic in that part of the territory; and the Executive Power directs that the National Assembly be at once advised as to this incident and furnished with all the antecedent facts that could be found in the archives of the previous government, which it was provided be sought for, and the information with proper orders be duly given to the envoy."

This was stated in the official organ of the Central American Federation; and the head of the State of Costa Rica also wrote most urgently, under date of November 17, 1824, to Dr. Molina, Minister Plenipotentiary of Central America at Bogotá (Doc. No. 253), as follows:

"EL PATRIOTISMO," a newspaper published at Guayaquil, in its issue, No. 4, of the 25th of September, of the present year, prints on the reverse of page 15, the following remarkable paragraph:

"By a Decree of the Government of July 5, the territory of Poyais, on the Mosquito Coast, from Cape Gracias a Dios, inclusive, to the River Chagres, has been declared an integral part of Colombia in virtue of the formal declaration made at San Lorenzo in 1803, by which the said part was added to the ancient Viceroyalty of New Granada, separating it from Guatemala. Consequently, there has been declared as illegal every enterprise directed to colonize any part of that Coast, and those who might attempt to do it as having incurred the penalties edicted against usurpers of national property and perturbors of interior peace.'"

The note goes on to say that this place (Poyais) is the country in which, it was asserted, one MacGregor had founded a monarchy and had been proclaimed King of the Mosquitos, and that—

“The context of the said decree is very strange and of doubtful meaning, because the territory to which it refers comprises, besides the Coast of Mosquitos to the North, the River and the Port of San Juan in the State of Nicaragua, and those of Matina and Bocatoro, or Estrella, in this state; and therefore it must be observed that whether or not the Spanish Government declared that Coast dependent on the Government of New Granada, such a measure must be considered as null and as arbitrary as that by which New Granada was depending on Spain (*sic*), both because the Coast as far as the Escudo de Veragua—according to its topographical situation and natural geography—belongs to the part of the continent or territory of our Republic of the Centre, and for the reason that the Coast of Mosquitos has remained independent in fact. The Coast of the Port and River of San Juan has depended on the State of Nicaragua since immemorial time, as indicated by nature, the same as the ports of Matina and Estrella have depended on this State of Costa Rica, the former being the one that has been constantly used in this part of the Republic on the North, and wherein the inhabitants of this State have their establishments and cacao plantations, and finally the same that by the years 1812 and 1813 was opened by the Cortes as a port of this province.

“Respecting the islands I have no data, save that San Andrés was subject to the Government of Guatemala and lately to that of Santa Fe; but whatever the case may be, it is clear that the supposed decree of that Government [Colombia] as far as the continental spots of the coast are concerned, attacks the integrity of this territory and indirectly the independence of the Republic.

"Hereby and whilst the Supreme Executive Power, being informed of the case, will give the desirable orders, I have been pleased to communicate these observations so as you may use them as you deem it best in the exercise of the high office of which you are in charge.

"God, Union, Liberty, San José, November 17, 1824.

"JUAN MORA."

As the Mosquito Coast never extended further toward the south than Punta Gorda, the Colombian claim of 1824 affected only the Central American territory of Nicaragua and Honduras, *leaving that of Costa Rica unaffected*, inasmuch as *neither the Royal order of 1803, nor the decree of 1824 made the Chagres a boundary of the Mosquito Coast; they mentioned this river ONLY AS AN INDICATION OF DIRECTION, OR COURSE*, as appears from the use of the preposition *hacia* (toward).

The Royal order of San Lorenzo, in speaking of the Mosquito Coast, could not, then, refer—and it is absurd to think that it sought to refer—to the Coast of Matina; and it mentioned the point of Chagres, not as a terminal, an extreme or boundary of the coast to which its dispositions related, but as a point of direction, or course, which might very well be, and in fact was, at a great distance from the southern extremity of the true Mosquito Coast.

This manner of expression was very common during the colonial régime of Spain in America, owing to the absence of precise and reliable geographical information about the new world, as is abundantly shown by the many instances of its use in the celebrated code of Don Carlos II. Law IV, title XV, book II of that code (Doc. No. 106), in fixing

the boundaries of the Audiencia of Tierra Firme, provides that it shall

"* * * have for district the Province of Castilla del Oro as far as Portobelo and its territory; the city of Natá and its territory; the Government of Veragua; and by the South Sea *toward* Peru as far as the Port of Buenaventura exclusive, and *from* Portobelo *toward* Cartagena as far as the River of Darién exclusive, with the Gulf of Urabá and Tierra Firme, etc."

Law X of the same title and book, indicating the territorial jurisdiction of the Audiencia of Quito, says:

"* * * and have for district the Province of Quito and by the coast *toward* the side of Los Reyes city as far as the Port of Payta, exclusive * * * and by the coast *toward* Panama to the Port of Buenaventura, inclusive."

No one in reading the texts mentioned could fail to understand that the expression "and by the Sea of the South *toward* Peru to the Port of Buenaventura, exclusive," did not concede to the Audiencia of Panama jurisdiction as far as Peru, but as far as the Port of Buenaventura, excluding the latter. "Toward" indicated there, "course," "direction;" under no theory can it be accepted as meaning "to" or "as far as." Nor can it be understood that the jurisdiction of said audiencia reached to Cartagena, for that city is merely indicated as a point fixing the direction, or course; the audiencia's jurisdiction stopped at the Darién River, exclusive. In like manner, it cannot be admitted that the Audiencia of Quito, in the direction of the city of Los Reyes, reached as far as that city, for it is evident that it stopped at the Port of Payta,

exclusive; nor did it reach to Panama, but stopped at Buenaventura.

The Royal order of San Lorenzo says:

"The King has resolved that the Islands of San Andrés and the part of the Mosquito Coast from Cape Gracias a Dios, inclusive, *toward* the River Chagres shall be segregated from the Captaincy-General of Guatemala and be dependent upon the Viceroyalty of Santa Fe." * * *

As may be seen the direction but not the terminal is indicated; and it is improper to convert the one into the other, since the word "*hacia*" (toward) and "*hasta*" (to, or as far as) have such different and opposite meanings. The method of expression was in every way imperfect, incomplete and obscure; and it should now be cleared up and completed by a correct and legitimate interpretation. But it would not be legitimate or correct to set up an interpretation that seeks to include in the phrase "Mosquito Coast" territory that was never embraced in that phrase. Nor can it be correct or legitimate to suppose that in such a phrase would be comprised, as belonging to Guatemala, a section of coast midway between the Escudo de Veraguas and the Chagres River which, belonging to the Province of Veragua and in the full and undisputed possession of that province (itself an integral part of the Viceroyalty of Santa Fe) would be segregated from the Captaincy-General of Guatemala of which it was not a part, in order to add it to the Viceroyalty of Santa Fe of which it was a part, since the latter was organized on August 20, 1739. To accept such a supposition is to accuse the minister who authorized and communicated the order to the captain-general and viceroy (who merely accepted, but did not comply with it) of supine ignorance. There is no foundation for such an accusation.

Nor is there any reason whatever for supposing that the Coast of Matina, situated to the south of the San Juan River, would go into the segregation ordered. The *terminal* of the part of the Mosquito Coast segregated from Guatemala was left without being written into the Royal order of 1803; and it is unquestionable that the extreme end of that segregated territory had necessarily to be, at the farthest, Punta Gorda, if any respect is to be paid to the more than abundant proof that has been gathered, showing that the **WHOLE OF THE MOSQUITO TERRITORY HAD FOR ITS BOUNDARY, ON THE SOUTH, THE AFORESAID PUNTA GORDA**, to the north of San Juan River.

In order that the truth of this conclusion may be evident, let it be supposed for a moment that the Royal order of San Lorenzo, instead of referring to the part of the Mosquito Coast toward Chagres, should have proposed to modify the state of things of the same coast in an opposite direction, or toward New Spain.

Let it be supposed, further, that it had said: "The King has resolved that the Islands of San Andrés and the part of the Mosquito Coast, from Cape Gracias a Dios, inclusive, **TOWARD CAPE CATOCHE**, shall be segregated from the Captaincy-General of Guatemala and made dependent upon the Viceroyalty of New Spain."

It is clear that as the territory of Mosquitos did not extend, on the north, beyond Cape Honduras or *Punta de Castilla*, in the vicinity of the city of Trujillo, the part of the coast segregated had of necessity to end at the said Cape or *Punta*; and Trujillo, Omoa, Santo Tomás and other places included in the part of the coast reaching as far as Cape Catoche were not, and could not be understood as being subject to such segregation, but remained

safely subject, as before, to the jurisdiction of Honduras, Guatemala and Yucatán, respectively. Under this supposition Cape Catoche would have indicated the course or direction, but nothing more. The boundary or terminal would have been left without being specifically expressed; but by tacit implication it would not have been possible to make it go beyond the known and accepted boundary of the Mosquito Territory on that side; that is to say, Cape Honduras or *Punta de Castilla*. Furthermore, if the addition had been accorded in favor of the Viceroyalty of New Spain, it would have been absurd to concede to it, as something new, that which already belonged to it, since all the coasts treated of were included in its district.

In a word, it should not be overlooked that the word "part" signifies only a portion of a whole, and necessarily excludes what does not enter into that whole.

Costa Rica, as is shown below, was then in the full, perfect and unquestionable possession of the whole extent of her coast on the North Sea, to the same extent that she *kept that possession afterward*, excepting the littoral of Bocas del Toro which, in 1836, was the object of forcible occupation by Colombia, in flagrant violation of the Treaty of March 15, 1825 (Doc. No. 257), which it now becomes necessary to discuss.

(3) TREATY OF 1825. MUTUAL RECOGNITION OF THE
RESPECTIVE TERRITORIES AND THEIR ACTUAL
BOUNDARIES.

On the date stated a treaty was signed at Bogotá between the Republic of Colombia and the Federal Republic of Central America, of which the State of Costa Rica formed a part, bordering upon Colombia. In that treaty, among other stipulations, both parties *mutually*

guaranteed the integrity of their respective territories "as they existed prior to the present war of independence." (Art. V.)

THEY OBLIGATED THEMSELVES FORMALLY TO RESPECT THE LIMITS OF EACH OTHER "*as they now exist,*" reserving to themselves the making amicably by means of a special convention the demarcation of a divisional line between the two states, as soon as circumstances permit it, or whenever one of the parties indicates to the other that it desires to take up such negotiations. (Art. VII.)

As Central America did not begin her international life until the 15th of September, 1821, it is evident that prior to that date there could not have been a beginning of *the state of war into which she was plunged with Spain by reason of the proclamation of independence of that date.* Therefore, the entire area that Central America (previously the Kingdom of Guatemala) held at the moment when the "*present war for independence*" began was guaranteed to her integrally by Article V of the Treaty of Bogotá. Did Colombia, in 1821 or 1825, possess, govern or administer the coast of the State of Costa Rica, from the San Juan River, her northern limit, to the frontier of Veragua, her southern limit? Certainly not; and the evidence of this fact is abundant and at its proper place in this Argument a minute statement thereof will be given.

This Article V did not and could not have for its object a transfer of dominion of the coast of Costa Rica above mentioned, by Central America, to Colombia. The clear, manifest and only purpose of that Article was to guarantee to the possessor of said coast the dominion which it exercised therein and which belonged to it. The treaty did not create—it did not establish, or legalize—any new right,

but it did recognize and confirm a preexisting right. The idea of a guaranty was in perfect consonance with the pre-existence of the right guaranteed. Colombia guaranteed that right, just as Central America, in its turn, guaranteed Colombia's dominions and possessions existing at the beginning of the state of war in which she was engaged with Spain. The meaning of the disposition under consideration was, therefore, that each of the parties kept as its own, respected and guaranteed by the other party, the territory that the colonial entity represented by it had held when the Spanish domination was finally removed.

In harmony with Article V, as above analyzed, Article VII stipulated that both parties formally obligated themselves and promised to respect their boundaries "*as they now exist*," reserving the demarcation of those boundaries to be taken up as soon as circumstances should permit, or whenever any of the parties should be disposed to enter upon the negotiation therefor. The provision in Article VII is in substance the same as the one in Article V; or rather, the two are different expressions of one and the same thought or underlying agreement—*respect for "the present state of things,"* which was converted by the stipulations into a single and obligatory guide for the fixing or demarcation of the boundaries on the ground. This state of things could have been changed only by the *mutual consent of the parties*; without such consent, any alteration that one of them might have made, by its own individual action, to the prejudice of the other party, would have been a violation of the treaty and would have had no other force or effect than to justify the annulment of the treaty at the will of the injured party.

The Treaty of 1825 decided the question as to frontiers peremptorily and in a very equitable and reasonable

manner; and there remained only the conclusion of a friendly arrangement for the *simple physical location* of the divisionary line. The respective territories taken together as distinct bodies or unities, but adjoining each other, were left safeguarded by the mutual respect for the boundaries "*as they now exist*," stipulated for in Article VII. The rest merely related to the procedure for the execution of the compact.

The clear and perfect proof that the essential part of the boundary question was settled finally, in principle, by Article VII of the Treaty of 1825, is to be found in the stipulation of Article VIII of the same instrument, which stipulation authorized the contracting parties to send their own commissioners to survey all the points and places on the *frontiers*, and to prepare such maps thereof as they might deem convenient or necessary, *in order to establish the divisional line*.

As has been shown, certain frontiers were admitted in 1825. These were the same that had separated the territorial jurisdictions of the two extreme provinces (Costa Rica and Veragua) of the great colonial entities which had their headquarters in Guatemala and Santa Fe, and the same that, since the 15th of September and the 28th of November, in 1821, had separated the territories of the provinces mentioned—both having been subject to the government of the mother country for a long time after the Republic of Colombia had been definitively organized. Numerous documents indicated the most noteworthy localities situated on one side or the other of the jurisdictional frontier which existed at the moment when Costa Rica and Veragua achieved their separation from the mother country; and it was only needful to run the line in such manner as to respect the possessions of each.

The Treaty of 1825, as has been said, definitively settled the boundary question between the Republics of Central America and Colombia when it established these two fundamental bases:

1. THE MUTUAL GUARANTY OF THE RESPECTIVE TERRITORIES "AS THEY EXISTED NATURALLY, BEFORE THE WAR OF INDEPENDENCE."

2. THE RESPECT FOR THE LIMITS "AS THEY NOW EXIST."

It was also stipulated that subsequently a special convention should make the demarcation of the divisional line; but it is clear that, except for agreements to the contrary, the course of such line must have been traced in such way as to show a just respect for then existing limits without infringing that guaranty.

To attain both of these results, and for the full execution of the compact even before the conclusion of the contemplated special boundary convention, two things needed to be ascertained—although in substance they constituted but one—(a) The footing upon which the territories of the contracting parties were found before the war of independence, and (b) The limits which separated the two countries at the moment when the Treaty of 1825 was signed.

This twofold question was, and is, rather a historical than a legal problem. The inquiry has for its object the ascertainment of actual, visible and palpable facts; and the solution is easy, because documents abound in which such facts are reliably stated as is herein elsewhere shown.

(4) FRONTIER SECTION ON THE ATLANTIC SLOPE.

Inasmuch as there is no controversy as to the Pacific slope, that region will be disregarded. In relation to the

Atlantic side it will be well for clearness of discussion, to divide it into six sections, as follows:

First Section.—The section belonging to the Province of Veragua, from the Escudo de Veragua and the Chiriquí or Calobébora River toward the east to the border of that province.

This piece of territory, at the time when the war for the independence of Colombia began (1810), was in the full possession of Spain, and it so remained until the end of November, 1821, when the province mentioned resolved to proclaim its independence, and took part in the movement started in Panama, and, together with the other sections of the Isthmus, asked to be incorporated into the Republic of Colombia which had been a regularly constituted entity since 1819. This territory did not enter upon, nor had it been engaged in a state of war with Spain until the 9th of November, 1821; and after its incorporation into Colombia, in February, 1822, as well as in 1825, it was in the possession of the Republic of Colombia, as an integral part of the latter, until its separation and definitive independence was secured in 1903. With respect to this section, there was not, nor is there now, any controversy of any sort between Costa Rica and Colombia or between Costa Rica and Panama.

Second Section.—This covers the territory of Bocas del Toro, from the Escudo de Veragua and the Calobébora River to the old Estrella River—called, in 1836, the *Culebras*, and later the *Changuinola*, *Tilorio* and *Tararia* River.

This section belonged to Costa Rica by virtue of her titles, according to the full demonstration made upon this point in the very learned opinion of Señores Moret and Santamaría de Paredes. The territory was the principal object of dispute between Costa Rica and Colombia,

because of its forcible occupation, in 1836, by the latter, which constituted a manifest infraction of the positive stipulations of the Treaty of 1825; but as President Loubet saw fit in his decision to definitively adjudicate that territory to Colombia, its loss will be accepted by Costa Rica if that award is now confirmed.

Third Section.—This corresponds to the territory of Talamanca, from the old Estrella or Culebras River, of 1836 (now the Changuinola) to the Tarire and Sixaola Rivers.

This section may be conveniently divided into two parts: (a) the coast region, embraced between the sea and the first mountains of the interior; and (b) the mountain region extending to the main cordillera. Regarding this section Costa Rica cannot exhibit the passivity and the resignation with which she will give up her clear rights to the territory of Bocas del Toro in obedience to the decision—and for a very potent reason, that the region (b), which will be called the interior of Talamanca, *never was the subject of controversy between Costa Rica and Colombia, was not submitted to the hazards of arbitration, and consequently could not be legally adjudicated to the latter nation.*

That interior region prior to 1810, between 1810 and 1821, in 1825, and afterward down to the present time, was always without the least interruption, in the open, quiet and tranquil possession of Costa Rica. That region, therefore, *was protected by the international compact of 1825 and by the unquestioned legal principle that what is not in litigation cannot be included in the judgment.*

With regard to the part (a) the same thing is true that has been stated as to (b), the only difference being that by reason of the recent Colombian invasions, Costa Rica's unquestionable possession therein was interfered with prior to the conclusion of the Arbitration Treaty of

1880. This foothold prompted the Colombian Senate to assert the fact of possession in Colombia's favor, although that possession was of a precarious character and was positively so declared to be by that Government in 1888, when the Commission of Engineers of the Panama Canal made the survey and land measurements. This part (a) is bounded by the seashore on the northeast; by the right bank of the Sixaola on the north, from its outlet to the mouth of the Yorquín River; thence by the right bank of the Yorquín to the south, where the latter ceases to be navigable; and on the southeast, by a straight line from this last named point to the Peak of Róbaló. Simultaneously with such proclamation of the Colombian Senate, which was openly in contradiction to the real facts, the inhabitants of the interior of Talamanca continued in possession and enjoyed the use of all the territory on the left bank of the Yorquín River as well as the river itself, and the Costa Rican authorities and the inhabitants—very often in the form of an armed troop—proceeded, without any objection whatever (as they do this very day), to travel by the right bank of the Sixaola, from a point situated in front of the terminal of the road connecting Old Harbor with Cuabre (on the left bank of the river) as far as the Yorquín. This subsection (a) is equally protected by the Treaty of 1825.

The perfect possession of the coastal and Talamancan interior subsections, from the Tarire to the Changuinola, is shown in the most satisfactory manner that could be desired, by repeated facts of an incontestable character. One of the most notable of these was the stay in that territory for a period of eighteen months of a body of engineers, in charge of the learned naturalist, Mr. William M. Gabb, under contract and paid by the Government of Costa Rica, while engaged in topographical, mineralogical

and ethnological investigations in that territory. *This scientific commission was put in possession of the land by the Governor and Military Comandante of Puerto Limón, in person, General Don Federico Fernández;*¹ and all the local authorities, at the head of whom was Mr. John H. Lyon, the Secretary-Director of the tribes of Talamanca, and the various caciques or chiefs whose settlements extended from the Tarire to the Changuinola, received and carried out the orders and instructions communicated to them by the Government of Costa Rica, to respect and assist the work of the said expedition. This was done in the years 1873 and 1874.

In 1875 a part of the work of that commission appeared in the scientific periodicals of the United States. In 1877 the geographical map prepared by Mr. Gabb was published at Gotha (Map XXXIV). In 1892 the Geographical Institute of Costa Rica published a Spanish translation of the principal report submitted by Mr. Gabb to the Costa Rican Government. The persistent silence on the part of Colombia, in the face of such facts, shows her entire acquiescence in the possession of Talamanca by Costa Rica, prior to and after the making of the Arbitration Treaty of 1880.

Numerous documents, which will be referred to at the proper place, confirm the perfect possession by Costa Rica of the territory now under discussion.

Fourth Section.—The coast of Matina, from the mouth of the Sixaola river to the mouth of the San Juan de Nicaragua, with its extension in width over the entire (eastern) slope.

This ought to be divided into two parts, for the sake of clearness: the first part (a) the littoral only, to which was

¹León Fernández, *Documentos para la Historia de Costa Rica*, vol. III, p. 331.

confined Colombia's vague claims of dominion under the authority of the supposed transfer of this littoral by the Royal order of San Lorenzo, of November 20, 1803. Colombia sought to maintain that this transfer had been made to the Viceroyalty of Santa Fe under the mistaken idea that it formed a part of the Mosquito Coast, although the latter never extended under Spanish rule to the south of Punta Gorda, in the vicinity of the Rama River.

The second part (b) consists of the lands situated to the west of the above littoral, and embraced the rest of the slope, with respect to which Colombia never advanced any territorial claim of any kind.

Of both of these parts; that is to say, from the shores of the sea westward as far as the slope extended, Costa Rica was in perfect and indisputable possession prior to independence, and so continued without a single day's interruption from the date of her independence down to the present moment, as will be shown by documents that cannot be impeached.

Consequently, the whole of that territory, from the Sixaola to the San Juan, and from the shores of the sea to the peaks of the cordillera, was always, and is now, under the shelter of the Treaty of 1825.

Fifth Section.—Between the San Juan de Nicaragua River and Punta Gorda, or the Rama River, lies the coast belonging to and in the possession of Nicaragua, which never belonged to the Mosquito Coast.

Sixth Section.—The Mosquito Coast, from Punta Gorda, or the Rama River, to Cape Gracias a Dios, is a territory in which Costa Rica has no interest; it belongs legitimately to Nicaragua. That republic holds it legally and with the sanction of various world powers, such as Great Britain, which by solemn treaty recognized the Nicaraguan sov-

ereignty over that territory; also by the Austrian Empire; which intervened in the arbitration relating to this territory between Great Britain and Nicaragua; and especially by the United States, which, even at the risk of a war with Great Britain, maintained with decision and energy the sovereign rights of Nicaragua over that region.

By the terms of submission under the arbitration treaty as Colombia has admitted, the Mosquito Coast was expressly excluded from the jurisdiction of the Arbitrator, in the suit as to boundaries with Costa Rica,¹ being territory in which a third party is interested, and consequently this is a section respecting which, strictly speaking, nothing can be said in this discussion, since it was not, and is not now, a debatable subject; so that whatever is said about it must be understood as stated for the purpose of illustrating the other points with which it has some relation. But it is not too much to observe that the Mosquito Coast being found to be—as it was in 1821 and 1825—in the full, perfect and indisputable possession of Central America, that territory also is under the shelter of the Treaty of 1825.

The question of boundaries between the States of Costa Rica and Colombia, therefore, is settled, according to *international law*, by the Treaty of Bogotá and under the principle of *uti possidetis*, in conformity with the historical and legal facts surrounding the colonial régime. The *colonial limits* were converted into *international limits* by mutual consent of the parties interested, in virtue of that peculiarly American principle of international law.

¹V. Exposé présenté à Son Excellence M. le Président de la République Française, par Don Francisco Silvela. pp. 63, 64, 72; M. Poincaré's 2d Memorandum dated Sept. 8, 1899, pp. 85, 86, 104, 105; and M. Poincaré's 3d Memorandum of July 20, 1900, p. 3.

CHAPTER IV.

CONFLICTS AND TREATIES ARISING OUT OF THE QUESTION OF BOUNDARIES. USURPATION OF 1836 AND TREATIES OF 1841 AND 1856.

I. USURPATION OF BOCAS DEL TORO BY NEW GRANADA (COLOMBIA).

- (1) USURPATORY DECREES.
- (2) THE TERRITORY USURPED BOUNDED BY THE
CULEBRA RIVER.

II. TREATY OF 1841, BETWEEN COSTA RICA AND THE STATE OF THE ISTHMUS.

III. TREATY OF 1856, BETWEEN COSTA RICA AND NEW GRANADA.

- (1) REPORT OF DON PEDRO FERNÁNDEZ MADRID
(1852).
- (2) OPINION OF THE COMMITTEE ON FOREIGN RELA-
TIONS OF THE NEW GRANADIAN SENATE (1855).
- (3) THE CULEBRAS RIVER.
- (4) THE TREATY OF 1856; THE CALVO-HERRÁN
LINE.
- (5) REJECTION OF THE TREATY; VARIOUS INTERPRE-
TATIONS OF THAT LINE.
- (6) GENERAL CODAZZI, THE AUTHOR OF THE GOLFITO
—CORDILLERA DE LAS CRUCES—THE CULEBRAS
LINE.
- (7) THE DORACES RIVER.

I. USURPATION OF BOCAS DEL TORO BY NEW GRANADA (COLOMBIA.)

(1) USURPATORY DECREES.

The Republic founded by Bolívar, known as the *Gran Colombia* (Great Republic of Colombia), ceased to exist in 1830, having been separated into three independent republics, called *New Granada*, *Venezuela* and *Ecuador*.

The Treaty of Bogotá, of 1825 (Doc. No. 257), continued to govern the relations between the Republics of New Granada and Central America in the matter of boundaries. The Federation of Central America continued to retain possession and dominion of all the territories which had been embraced within the jurisdiction of the Captaincy-General of Guatemala under the sovereignty of Spain, including the Mosquito Coast, the Matina Coast and the coasts of Bocas del Toro or Almirante Bay, as far as the Escudo de Veragua.

In the exercise of its rights, the Government of the Federation, and subsequently the State of Costa Rica, made various concessions to citizens and foreigners for the exploitation of the soil and of mines in those territories.

But the Congress of New Granada, on May 30, 1836 (Doc. No. 267), decreed the occupation of Bocas del Toro, providing that until the constitutional formalities were complied with for legislative determination of the political organization of that district, there should be established on the island known as *Boca del Toro* in the Channel of the Dragon, a Political Chief with jurisdiction over the whole of the said territory.

The decree did not assert any other reasons for this action than the fact of the existence of numerous foreign settlers “* * * in the islands of *Bocas del Toro*, * * *

which belong to the dominion of the Republic * * *," and the urgent need for affording to their settlers the advantages of a regulated civil administration, assuring at the same time the Republic's proprietorship.

The Government of New Granada actually did occupy, with a military force, the Port of *Bocas del Toro* (Island of Colón) in January, 1837, and stationed there a Political Chief, compelling the official therein installed as the representative of Central America to withdraw.

That action was preceded by a note, which the Governor of the Province of Veragua, Señor Manuel de Ayala addressed on September 23, 1836 (Doc. No. 269), and in the name of the Government of Colombia, to the Government Secretary of Costa Rica, and to which the latter made reply on November 30 of the same year. Señor Ayala said:

"The object of the present communication is to inform Your Excellency, the Governor of the State of Costa Rica, that there has arrived at the Island of *Boca del Toro*, on the North Coast of this Province of Veragua, a citizen of Central America, accompanied by a troop of several persons, who says that he is commissioned by the authorities of your Republic to take possession of the adjoining territory and to exercise over it governmental functions, as emanating from the supreme action of that same State in reference to dominion over that territory."

He added further on:

"As the Executive Power has already adopted the necessary measures for the immediate execution of the legislative action cited (Decree of May 30, 1836), a force will very soon arrive at the Island of *Boca del Toro* to re-establish on that coast the dominion and lordship of New Granada. For this

reason the undersigned Governor has been advised to address himself to the State of Costa Rica, making a statement of the facts and requesting that, if the Central American individuals who are now on the Island of *Boca del Toro* in the character of persons charged with keeping the possession thereof, have come by order of the Government of your State, it may be pleased to direct them to immediately withdraw, respecting the rights of proprietorship of the Republic of New Granada and leaving to its authorities the exercise of the jurisdiction that belongs to them over said island and adjacent territory; *unless they may desire to remain there as settlers, subject to the Granadian law and authorities* * * *. The undersigned expects that the friendly action which has already been taken, *in the name and by the express order of the National Executive Power*, will receive due attention by the Governor of the State of Costa Rica; and that in pursuance thereof orders will be duly issued as already indicated for the return of the Central American citizens now in the character of commissioners in the Island of *Boca del Toro*, or for their peaceful submission to the laws and authorities of the Republic."

In his answer (Doc. No. 271), the Costa Rican Minister, Señor José Anselmo Sancho, confined himself to the observation that the territory of the State, according to its fundamental law, was bounded on the coast of the North Sea by *the mouth of the San Juan River and the Escudo de Veragua*, within which extremes were situated the bay of *Bocas del Toro* and the islands lying therein; and that this being an affair within the cognizance of the Federal Central American Government, a statement would be made thereto in order that proper action might be taken.

By another decree of the New Granadian Congress, May 26, 1837 (Doc. No. 275), the Canton of *Bocas del Toro* was created out of the parochial districts of that name and

of *Mineral*, in the Province of *Veragua*, with the extent indicated in the prior decree.

(2) THE TERRITORY USURPED BOUNDED BY THE CULEBRAS RIVER.

The New Granadian decree of May 30, 1836, described the territory of *Bocas del Toro*, by stating, in its Article I, that it was bounded as follows:

“* * * on the north, by the coast which runs from the River *Concepción* to that of *Culebras*, in the Province of *Veragua*; ON THE NORTHWEST BY THE FRONTIER LINE WHICH SEPARATES TOWARD THAT SIDE THE REPUBLIC OF NEW GRANADA FROM THAT OF CENTRAL AMERICA; on the south by the crest of the cordillera of Chiriquí, following this direction as far as the place called *Guayabo*; and from there by a line which proceeds by the *Mineral de Veragua*, toward the place called *Barreras*, on the banks of the River *Concepción*, and continuing downstream to its mouth * * *.”

With this territory there was formed the Canton of *Bocas del Toro*, made up of the parochial district of *Bocas del Toro* (to the west) and of that of *Mineral* (to the east), a canton which is now the province of that name in the Republic of Panama.

Certainly the northern and southern limits of the Canton of *Bocas del Toro* were determined by this decree; the first by the shore line that connected the *Concepción* and *Culebras* Rivers; and the second by the crest of the cordillera of Chiriquí, following the direction from west to east, the line proceeding toward the sites of *Guayabo* and *Barreras*, and coming to an end at the *Concepción* River.

As to the northwest, the decree provides that its boundary shall be “* * * the frontier line which separates toward that side the Republic of New Granada from that of

Central America." There is no further indication for the demarcation of this line; but it is easy to locate it if we take into consideration the two exact geographical facts which follow:

1. The line begins at the mouth of the Culebras River, the end of the frontier assigned to the north side of the figure described, which, starting from the Concepción River, proceeds to the Culebras River. The line that separates the territories of New Granada and Central America forms an angle with the north line indicated at the outlet of the said river.

2. This outlet of the Culebras River, being the point of departure for the second line, the latter ought to be traced in such manner that the Central American territory will be left adjoining the northwestern border of the neo-Granadian territory, and to accomplish this it is indispensable that the course of the divisional line should be from the northeast to southwest. If, however, instead of taking that direction, the separating line should start from the mouth of the Culebras and proceed in a course due west, for example, the neo-Granadian territory would adjoin the Central American territory on the *north* and not on the *northwest*. In the same way, if a *north-south* course were taken from the mouth of the Culebras, the border of the Colombian territory on that of Central America would be on the *west* and not *northwest*, as required by the decree of 1836.

The neo-Granadian decree cited makes no other mention of the Culebras River, in relation to the frontier, than its outlet into the sea; and the course of that stream was entirely unknown at that period. There was a significant omission to accept or reject its course as a basis for a

boundary; on the contrary, preference was given to the geographical angle which was clearly adopted.

It should be specially borne in mind that the *only legal basis* adduced by the Congress of New Granada to possess itself of the territory of Bocas del Toro, was the allegation that that territory *belonged* to the Province of Veragua, "in the dominion of the Republic."

What is to be understood by the Culebras River? Señor Peralta, in his notable work: "*La Géographie historique et les Droits territoriaux de la République de Costa Rica*," states and explains perfectly the five distinct ways in which the name of *Culebras* has been accepted as designating different streams (p. 50 *et seq.*) The first way, and the oldest—that which was used and adopted in preparing the maps of the 17th century, and the one always understood by Costa Rica—was that which took the Culebras for the *Calobébora* or *Chiriquí*, a stream that empties at a point opposite the Escudo de Veragua, the boundary with the Province of Veragua (and therefore with Colombia) which has always been maintained by Costa Rica.

If any *Culebras* River ever did exist, it must have been the one corresponding to this first acceptance of the name; but it is evident that the neo-Granadian decree could not have referred to such a stream, inasmuch as its outlet was clearly located a good deal to the east of the Chiriquí Lagoon, and it would have been absurd to think of fixing as the boundary for the Canton of *Bocas del Toro*, which embraced in addition to that lagoon the Bay of Almirante, a river which was not to the west of that body of water. If the decree of 1836 had taken as the *Culebras* River the one that figured as such on the charts of the 17th century, there would be no boundary question to-day, for that river is the *Chiriquí*, or *Calobébora*, which really separated the

jurisdictions of Costa Rica and Veragua during the colonial régime.

But Colombia has been moving this name along, to designate several of the streams situated to the west of the Bay of Almirante, each time getting further away from the latter as her desire for territorial aggrandisement increased. The geographer D'Anville, who was not acquainted with the country, gave the name "*Culebras*" to the stream known as the *Estrella*, *Chánguene* and *Tilorio*, on one of the maps of the 18th century (Map VIII), copied by later geographers; and this must be accepted as the one which New Granada adopted in her decree of 1836.

The reason for coming to this conclusion is that Colombia did not carry her line beyond the *Estrella* or *Changuinola* River subsequently to 1836, except tentatively, in 1869 and 1870, and because Costa Rica was in full possession of the whole of the territory as far as the *Estrella* River in 1873-1875, when Gabb made his explorations in Talamanca, which have been spoken of herein elsewhere.¹ The same was true in 1880, when arbitration was stipulated for by the treaty signed on December 25 (Doc. No. 364) and also in 1885, when the government of Costa Rica issued its instructions for the negotiations of the compact of 1886 (Doc. No. 368) for the purpose of fixing with precision the area embraced in the dispute, as a result of explanations that had to be made concerning it to avoid objections suggested by the Government of the United States to the progress of the boundary arbitration with Colombia. This was true also because the subsequent advances made by the Republic of Colombia upon Costa Rican territory toward the northwest,

¹P. 68.

as far as the right bank of the Sixaola, were confined and limited to the littoral along the coast, and Colombia thus respected the possession and jurisdiction of Costa Rica over the right bank of the *Sixaola*, from *Cuabre* to the *Yorquín* River—the only way of communication by land between Talamanca and the ports of the mouth of the *Sixaola*, *Gandoca*, *Old Harbour*, *Cahuíta* and others. The possession and sovereignty of Costa Rica over the central valley of Talamanca and all its dependencies situated on the right bank of the *Tarire* and left bank of the *Yorquín* were also respected by Colombia. With regard to the left bank of the *Sixaola*, from its outlet upstream, the possession of Costa Rica was always scrupulously respected.

The boundary of the Province of Veragua and of the Colombian Territory as fixed by the Decree of 1836, was identified by subsequent facts.

On June 2, 1843 (Doc. No. 478), New Granada issued a new law concerning the organization and the special regulation of *Bocas del Toro*. In the first Article that district is bounded *on the northwest* by the *frontier line which on that side separates the Republic of New Granada from that of Central America*.

On February 27, 1855 (Doc. No. 301), by an amendment to the neo-Granadian Constitution, the *sovereign State of Panama* was created; and in Article 2 the following provision was made for its boundary on the Costa Rica side:

“The limits of the State *on the west* shall be those which may be definitively established between New Granada and Costa Rica.”

In 1887 a work of an official character was published in Bogotá, entitled “*Descripción, histórica, geográfica y*

política de la República de Colombia," in which the following statement was made as to boundaries:

"The general limits of the Republic are: on the north the Atlantic Ocean; *on the northwest, the Republic of Costa Rica*; on the west, the Pacific Ocean; on the south, the republics of Ecuador and of Peru; and on the west the Empire of Brazil and Venezuela."

The same appears in the Colombian geographical works of General Mosquera (Doc. No. 577), Doctor Pérez (Doc. No. 576) and Señor Esguerra.¹

The result, then, is to clearly establish the fact that its territory in the extreme west adjoins that of Costa Rica exclusively and does not include any part of the Mosquito Coast—a fact based upon repeated legislative acts of Colombia and the statements of her official geographers.

The final observation to be made is that notwithstanding the invasion of the territory of *Bocas del Toro* inflicted the most serious injuries upon the Federal Central American Republic, and more especially upon the State of Costa Rica, the *precise and clear description* that was made of the territory invaded by virtue of the neo-Granadian decree of occupation presents the advantage of *limiting the sphere of the intrusion*, for that sphere cannot be overstepped without committing new violations of the territorial rights pertaining to the state adjoining and immediately prejudiced, and with an absolute disregard of the prohibition against such advance which the invading government placed upon itself in defining the *area of the invaded territory*.

¹ *Geographic Dictionary of the United States of Colombia* (*Diccionario Geográfico de los Estados Unidos de Colombia*), by Joaquín Esguerra O. Bogotá, 1879. Under the word "*Colombia*," p. 63.

II. TREATY OF 1841, BETWEEN COSTA RICA AND THE STATE OF THE ISTHMUS.

In the year following the formation of the Canton of *Bocas del Toro*, the Federation of Central America was dissolved and the State of Costa Rica entered into full enjoyment of its sovereignty (1838). Shortly thereafter, in 1840, Panama separated from New Granada to form the Republic of the *Isthmus*.

These two independent states thereupon entered into a treaty of mutual recognition and friendship, signed on September 22, 1841 (Doc. No. 278), by the Supreme Chief of Costa Rica and by Don Pedro de Obarrio, as the special representative of the Government of the Isthmus. In the 4th Article it states:

“The State of Costa Rica reserves its right to claim from the State of the Isthmus the possession of *Bocatoro* upon the Atlantic Ocean, which the government of New Granada had occupied, going beyond the division line located at the *Escudo de Veraguas*.”

Ratifications of the treaty were duly exchanged, as appears by the preamble to the Decree XL, issued by the Supreme Chief of the State of Costa Rica and published in the collection of the laws for the years 1841 and 1842, p. 234 (Doc. No. 278), as follows:

“His Excellency, the President of the State of the Isthmus having ratified, within the period of the extension which was requested for that purpose, a treaty of friendship and commerce concluded and signed between that State and that of Costa Rica, in the city of San José, on the 23rd of September of the past year of 1841, after the formalities prescribed in Clause 2, Sec. 1, Art. 5 of the Decree of bases and guaranties, decrees:

"Sole Article: The following treaty shall be kept and complied with from this day forth as a law of the State * * *."

In 1842 the State of the Isthmus was again united to New Granada, but the reservation contained in the Carrillo-Obarrio Treaty must be understood as continuing in effect, in view of its purpose as a notification to the invading Power or its successor, of *the solemn protest on the part of Costa Rica against the forcible occupation of Bocas del Toro*. The legitimate rights of Costa Rica were thus safeguarded in this way in 1841 and 1842.

III. TREATY OF 1856 BETWEEN COSTA RICA AND NEW GRANADA.

(1) REPORT OF DON PEDRO FERNÁNDEZ MADRID (1852).

The above mentioned treaty was preceded by two noteworthy reports made by that eminent statesman of New Granada, Don Pedro Fernández Madrid—the one as a private individual, in 1852 (Doc. No. 298), and the other as a senator, in 1855 (Doc. No. 302), each of which is very important, not only for the interpretation of the treaty, but also as to the general question of boundaries between the two republics.

Señor Fernández Madrid, as the most competent person in these matters, was consulted by the neo-Granadian Government concerning the question as to the Mosquito Coast, and he delivered an extensive report thereon on November 29, 1852, which report, notwithstanding its great leaning toward the Colombian side, to say nothing of the many errors committed by its author, contained some very significant assertions.

He summed up the subject by advising his government to retire from its pretensions to the Mosquito Coast, because the Royal order of San Lorenzo, of 1803 (Doc. No. 192)—the *only title* upon which they were based—was *worth nothing*, and he further advised making use of it as a weapon in the proposed scheme to secure, by means of a boundary treaty with Costa Rica, and by way of set-off, a valid title which would assure the control of New Granada over the region of Bocas del Toro, on the north, and a good port of the Gulf of Dulce, on the south. This opinion strips of all its authority the Royal order of 1803, as a pretext for a claim by Colombia that the Mosquito Coast comprised the whole of the coast of the Atlantic, from Cape Gracias a Dios, to the northern border of her territory; that is to say, the coasts belonging to Honduras, Nicaragua and Costa Rica.

Señor Fernández Madrid begins by declaring that what the Spanish Government, the geographers and navigators always understood by the "Mosquito Coast" was the shore from Cape Honduras to PUNTA GORDA, near the most northern arm of the San Juan de Nicaragua River; and he adds that it was so understood by the British Government, as shown by the note from its legation in 1847 or 1848.

He further says:

"Our title to the dominion of the Coast of Mosquitos * * * the *Royal cédula* (it was a Royal order) of November 30, 1803 is *worth nothing*, nor is it of any utility for ourselves. * * *

"* * * The title that we have to the dominion of that territory is of such an anomalous and indefinite nature, that strictly it would be reduced to the duty of affording it the maritime protection it might need for its coast guard against outside aggressions * * * and this appears to have been the *intention* with which the Spanish Government issued the *cédula* of 1803;

since by it there was *not then added* to New Granada any integral province or territory, but simply a portion of the *Coast of Mosquitos*; and by "coast" cannot be understood the districts of the interior country, nor even the littoral establishments * * * which always were, as they continued after the issue of that order, exclusively dependent upon Central America.

"Under this interpretation, which seems to be the *only one* that harmonizes well with that document, the dominion we have derived from Spain over the said territory would be left reduced to the islands, which undoubtedly are embraced under the designation of "coast," and to an extension of *beach, littoral* or *shore* of the sea, exceedingly difficult to make out and of which we have absolutely no need."

After thus taking away the authority of the Royal order of 1803, he suggests to the neo-Granadian Government the idea of making a boundary treaty which would signify the abandonment or renunciation of the rights over the Mosquito Coast, and which would fix the frontier line with Costa Rica.

He was afraid that Costa Rica would again bring up her claims over the Archipelago of Bocas del Toro and the Island of the Escudo de Veragua; and with this in view he interpreted in his own way the antecedent facts of the colonial régime, saying that the divisional line between New Granada and Guatemala was not established by the Spanish Government in any but the vaguest way. He goes on to say:

"It cannot, however, be doubted that in some official document of the Spanish Government there was fixed as the end of the two jurisdictions, on the Atlantic the River *Culebras* and on the Pacific the Gulf of Dulce, between Punta Mala and Cape Boruca, since the most accredited old geographers are in accord in the recognition of such boundaries * * *."

These are the points he indicated as the extremes of the line which should be agreed upon, saying with respect to the northern extreme, that it could be Punta Careta, or the outlets of the *Doraces* or *Culebras*.

With respect to the line that should connect these extreme points, he thought that it should be left to subsequent negotiations when the ground would be better known and a good topographical map prepared, for, he asserted:

“* * * the fact is that the division line between the two Republics runs through a rough country, which was never explored during the time of the Spanish Government and which even yet has not been surveyed.”

(2) OPINION OF THE COMMITTEE ON FOREIGN RELATIONS
OF THE NEW GRANADIAN SENATE (1855).

Following the counsel of Señor Fernández Madrid, the Government of New Granada resolved to begin negotiations for the settlement of the boundaries with Costa Rica. The matter was brought before the Senate, and that body gave its consent, in accordance with the opinion of the Committee on Foreign Relations, which was prepared by Señor Fernández Madrid himself and submitted on April 10, 1855 (Doc. No. 302).

Señor Fernández Madrid's senatorial report is almost a reproduction of the opinion prepared by him, in 1852, in response to the request of the Government, although it was in a form more suitable to the case.

At the outset must be noted the following declaration in this opinion of the Senate:

“The boundary question, therefore, was left (after the emancipation), *as it continues*, upon the footing

it was placed by the Treaty of March 15, 1825, in Art. 7 of which both parties promised to celebrate a special convention as to boundaries and in the meantime to respect those which then existed, which are still the same that separated the Viceroyalty of Santa Fe from the Captaincy-General of Guatemala."

He considered, therefore, that the Treaty of Bogotá, of 1825 (Doc. No. 257), was a subsisting compact in respect to boundaries; and esteeming the concessions of Costa Rica in Bocas del Toro as a violation thereof, he sought to justify the legislative decree of 1836, and the occupation of that region as an integral part of the territory of Veragua.

He recognized the *uti possidetis* to which the treaty referred as that of the colonial régime which existed at the end of the 18th century, the only new thing about it in the 19th century being the Royal order of San Lorenzo relating to the Mosquito Coast, which had at times been subject to the Captaincy-General of Guatemala and at others to that of Cuba, and lastly to New Granada. Then he says:

"But it is to be observed that these mutations, *which had for their sole purpose the better defence and protection of the said coast, did not introduce any substantial change in the limits of the Viceroyalty, properly speaking, the jurisdiction of which * * ** was extended constantly to all the territory of the Isthmus * * * *which bordered upon the territory of Costa Rica by a line drawn from the middle of the Gulf of Dulce to the mouth of the River Doraces or Culebras, a short distance from Punta Careta * * *.*"

The Committee on Foreign Relations of the Senate understood that by virtue of the provisions of Art. 7 of the Treaty of Bogotá, the celebration of a special boundary convention between the states of New Granada and Costa

Rica was mandatory; the negotiations for the moment were, therefore, confined to the determination of the divisional line in a general way, fixing the following points:

"1. The precise section of the Gulf of Dulce, not yet well known between Punta Mala and Cape Boruca, where the frontier demarcation must be begun; a section or point of departure which, as Señor Colonel Codazzi proposes, can be fixed in the central channel of said Gulf, denominated "Golfito," in which there empties the river of the same name.

"2. The irregular line (also unknown in part), which, ascending the River Golfito and passing by the Sierra de la Cruz, must serve as a boundary in the interior, until it reaches the headwaters of the River Doraces or of the *Culebras*; by the course of one of which streams the frontier must naturally proceed.

"3. The point at which the said line ought to come out on the Atlantic, adopting for that purpose the mouth of *one of the rivers mentioned*, or in the last resort Punta Careta."

The Senatorial Committee then added the following interesting paragraphs:

"The most general and accepted opinion of the geographers and historians of America and the acts themselves of the Spanish Government, taken altogether, as has already been seen, indicate the end of the division line in the River *Culebras*; but as there cannot fail to be noted in one writer or another some discrepancy concerning which of the points stated (*Doraces, Culebras or Punta Careta*) is the one which in reality does separate the two jurisdictions, it seems that this uncertainty, although of little weight in comparison with the other uniform data which designate the River *Culebras* as the border, it could nevertheless be admitted, thanks to the freedom the two governments enjoy (under the Treaty) to deviate from a strictly legal line and accommodate themselves, if

they deem it proper, to take another, which, without departing in any absolute way from the boundaries already indicated, may be more in harmony with what is desirable for both countries.

"Proceeding thus, with a frank and sincere mutual desire to reach an agreement, it does not seem that it will be impossible to secure it, especially if we confine ourselves to securing our possession of Bocas del Toro and reserving to ourselves a good anchorage in the Gulf of Dulce, being thoroughly convinced that this being settled in a satisfactory manner, all the other points are of entirely secondary interest."

It clearly results from this opinion of the neo-Granadian Senate, of 1855, and much more from the very frank explanations in Señor Fernández Madrid's report of 1852:

1. That New Granada desisted from her pretension to territoriality on the Atlantic side of Costa Rica based upon the Royal order of 1803, the authority of which she completely abandoned.

2. That she undertook to legitimize her occupation of the territory of Bocas del Toro, not by relying upon the Royal order of 1803, but upon the colonial *uti possidetis* prior thereto and not modified thereby—holding said territory to be integral portion of the Province of Veragua.

3. That as this second pretension to territoriality involved the boundary question, Article 7 of the Treaty of Bogotá of 1825 was resorted to by her on the theory that it still subsisted as to this point.

4. That for extreme points of the divisional line she indicated the *Culebras* and *Golfo* Rivers with the double purpose of assuring to herself the possession of Bocas del

Toro and obtaining a good anchorage in the Gulf of Dulce—holding all else to be unimportant.

(3) THE CULEBRAS RIVER.

This river has been described as the *mythical Culebras River* and that appellation will now be justified. If geographical maps by themselves alone, unsupported by the documents of the period or the traditions duly handed down, could be used as legitimate evidence of the existence of streams which for centuries were supposed to serve as boundary lines for original administrative jurisdictions—and later for the international partition of adjacent countries—it might well be accepted as true that the *Culebras River*, which was created in the 18th century out of the fancy of the geographer D'Anville (who had the fortune to be quoted by others) is the *Estrella*, or *Changuinola River* of the present day. BUT NO DOCUMENT, ANCIENT OR MODERN, AND NO MAP DATED PRIOR TO 1836, SHOWS THAT THE RIVER CULEBRAS IS THE TARIRE OR THE SIXAOLA RIVER.

And this being a vital point in the present controversy, the utmost pains have been taken to search through the voluminous documents of both parties for any passage or passages that might make mention of a river which, under this particular name of *Culebras* and as a distinct water-course from the Calobébora or Chiriquí River could have formed the separating line between jurisdictions during the Spanish administration, or of sovereignties that came into existence subsequently to independence and prior to 1836. It is to be supposed that a person so well versed in these matters as Señor Fernández Madrid would have sought to discover such basis for the neo-Granadian

claims; it is evident, however, that he did not have the good fortune to find it, for, instead of citing or invoking it in support of the rights of his country, what he did do was to state in his reports of 1852 and 1855 that—

“It cannot, however, be doubted, *that in some official document* * * * there was fixed as the end of the two jurisdictions, upon the Atlantic the River Culebras * * * since the most accredited old geographers are in accord in the recognition of such boundaries * * *.”

Colombia carried on the most diligent researches in the archives of Bogotá and in those of Spain, seeking to discover the document which Senator Fernández Madrid said he had no doubt was in existence, but in vain, for no such document ever came to light, nor was there any sign or news of it. Finally, General Don Antonio B. Cuervo, Minister Plenipotentiary of Colombia in Spain, and the author of a rich collection of papers from the Spanish archives, in four large volumes, concerning the territorial questions of Colombia, announced to the world the happy discovery. These are his words:

“This first volume embraces the description and study of the Colombian coasts upon the Sea of the Antilles; and in order to make it, as complete as possible many important documents are included, all unpublished. After Fidalgo there follows a document of no less importance, to wit, *the exploration of the beaches of the north coast of the Ancient Province of Veragua*, made by the retired Sergeant Manuel de Jesús Atencio. THIS ACCOUNT SERVES TO DEMONSTRATE THE JURISDICTION EXERCISED BY THE GOVERNMENT OF THE PROVINCE OF VERAGUA OVER THE TERRITORY OF THE ISTHMUS AS FAR AS THE

CULEBRAS RIVER; and the territory occupied by the *Doraces* and *Guaimíes* Indians, including the WHOLE of the littoral of the *Bay of Almirante* and *Bocas del Toro*, for which Colombia is now contending with the neighboring Republic of Costa Rica."

Noting, therefore, that in this account by the retired Sergeant Atencio, the proof, according to General Cuervo, is to be found of the existence of the famous *Culebras River*, the *international boundary between Costa Rica and Colombia*, that precious document has been read with the greatest care; but that document does not furnish the evidence desired by Señor Fernández Madrid, for not even once does it make any mention of such a stream as *Culebras*. Atencio cites in his account thirty streams both great and small; these are given, in their alphabetical order, in Table No. 2. and show this fact: *that the name of CULEBRAS, as applied to a river or a place, does not appear a single time in the writing of Señor Atencio, and that the latter did not penetrate the shores of the Lagoon of Chiriquí or Bay of Almirante; nor did he pass further than the Cañaveral River, which empties in front of the Island of Escudo. Indeed, as a matter of fact, the learned General Cuervo read into the account of Atencio what the latter never wrote therein.*

There does not exist, nor has there ever existed, as an international frontier between Costa Rica and Veragua, any *Culebras River*; that river is a purely modern invention, if we disregard its synonym, the Calobébora. Señor Fernández Madrid must have expected with perfect good faith that some document would turn up of the time of the Spanish Government which would come to the support of the Colombian territorial pretensions; but

one who dedicated a great part of his life to the study of these questions and wrote with a fuller knowledge of these matters than any one else, Señor Don Francisco de Paula Borda, after the most laborious investigations, which he carried on for twenty years, was compelled to come to the positive and definite conclusion set forth in the following words:

“This doubtless, is the reason why, as we have stated elsewhere in this book, when some official of the Viceroyalty speaks of the extent of the territory subject to the political and military command of his Viceroy, he fixes the limits of the Viceroyalty at Punta Burica, on the Pacific, and at Punta Careta or the Doraces River or the *Culebras*, on the Atlantic. The same thing was done by some worthy geographers, historians and travellers who followed that authority, as will be seen in the chapter of this book treating of the opinions of geographers and historians. NO ONE, HOWEVER, UP TO THE PRESENT TIME, HAS EXHIBITED, IF WE EXCEPT THE TWO MAPS OF WHICH WE SHALL SPEAK HERE-AFTER, ANY OFFICIAL DOCUMENT WHEREIN SUCH ARBITRARY LIMITS ARE FIXED BY THE KING OR IT IS STATED THAT THEY WERE AT ANY TIME FIXED. WE, OURSELVES, FOLLOWING THE GENERAL CURRENT, FELL INTO THIS INVOLUNTARY AND TRADITIONAL ERROR FOR SOME YEARS. NOW WE REJECT IT ABSOLUTELY * * *.”¹

After this categorical declaration, made by a person so thoroughly acquainted with the question, no one in Co-

¹*Límites de Colombia con Costa Rica*: Memorial prepared by the order of the Government of Colombia, by F. de Paula Borda, pp. 325, 326, Bogotá, 1896.

Colombia undertook to search for any document which would indicate the *Culebras* River during the time of the Spanish Government as the jurisdictional limit of New Granada on the side of Central America; and, therefore, in the records of the past litigation, notwithstanding the declarations made in 1880 by the Senate of Plenipotentiaries of Colombia, which were the immediate precedent for the basic arbitration treaty between Costa Rica and Colombia, THERE WILL NOT BE FOUND, EVEN ON A SINGLE OCCASION, ANY MENTION OF THE CULEBRAS RIVER, either in the memorandum of Señor Silvela, which made official demands on behalf of Colombia, or in the memorandum of M. Poincaré, which served as a reply to the brief for Costa Rica, or in the *Résumé* or summary of Colombia's territorial titles prepared by the representative of that Republic before the Arbitrator, Señor Betancourt, or, much less, in any of the other memoranda that were made use of before the Arbitrator, in addition to those stipulated for in the Treaty of Arbitration, which memoranda, furthermore, were made use of without the knowledge of the representative of Costa Rica.

As Señores Moret and Santamaría de Paredes have very justly observed in their learned opinion, Colombia was not trying in that proceeding to defend the frontier of her territory bordering upon Costa Rica—frontier which, up to the moment when the arbitration treaty was signed, she had maintained was formed by the mouth of the *Culebras* River; but she was seeking to eliminate Costa Rica from the map, and on the strange and contradictory theory that the Province of Veragua extended, on the Atlantic side, as far as Cape Gracias a Dios; and that the transference of the protection of the Mosquito Coast to the Viceroyalty,

ordered in 1803, brought it down from Cape Gracias a Dios as far as the frontier of Veragua, which, as before stated, then became, not the Escudo de Veragua, or the imaginary *Culebras* River, but the very same *Cape Gracias a Dios* itself.

This absurd theory—doomed from its very inception by its inherent self-contradiction—was adopted as the result of the true and well founded statement made by Señor Borda as to the *non-existence of any document which would fix the CULEBRAS* River as the limit of Veragua; for, as the action of Colombia was left without any support, it was thought to enlarge the Colombian pretensions by invoking a previous landmark, purely historical, and no more existent at the time of the political emancipation of the two rival republics than was the apostolic brief of Julius II, in 1514, which extended the jurisdiction of the first Bishop of Darién to Cape Gracias a Dios.

(4) THE TREATY OF 1856; THE CALVO-HERRÁN LINE.

In pursuance of the consent of the Senate, approving the said opinion, the neo-Granadian Government, represented by its minister plenipotentiary at Washington, General Herrán, opened negotiations with the Government of Costa Rica, represented by its chargé d'affaires, Don Luis Molina, and several conferences were held in October of 1855 (Doc. Nos. 303, 304).

General Herrán at once asked for a line that began at the mouth of the Doraces River and ended at the outlet of the Golfito River, invoking the *uti possidetis* recognized by the Treaty of Bogotá of 1825, and bringing forward the Royal order of 1803. Notwithstanding it had been nullified, he used it, as Señor Fernández Madrid had counselled, as a

weapon in the contest. Don Luis Molina opposed this effort by demonstrating that the rights of Costa Rica extended as far as the Escudo de Veragua and by setting up the nullity of the Royal order; but he found it impossible to reach an agreement with the representative of New Granada.

The question was then taken to the capital of Costa Rica, and there it was settled by its Minister of Foreign Relations, Don Joaquín Bernardo Calvo, and General Herrán, who signed the "Treaty of Friendship, Commerce and Limits," between the two republics, on the 11th of June, 1856 (Doc. No. 307), by Art. 41 of which the two signatories established the following divisional line, known as the Calvo-Herrán Line:

"* * * a line which, beginning on the coast of the Pacific Ocean, at Punta Burica, at $83^{\circ} 13'$ longitude west of the meridian of Greenwich¹, proceeds in a straight line to the source of the River *Agua Clara*, at the highest place where its waters have their origin; thence continuing by another straight line to the northwest quarter north, until the summit of the *Cordillera de las Cruces* is reached, which is found in this direction; thence continuing by the crest of the same Cordillera to the source of the River *Doraces*, and from thence down stream by the middle of principal channel of this river until it empties into the Atlantic."

Costa Rica was at the time engaged in a foreign war and was devastated by cholera; so she yielded to the gallant General Herrán, who was one of the great personages of the independence of Colombia, and who personally offered his sword in Costa Rica's emergency and succored the widows of her soldiers with a much-appreciated donation.

¹This is an evident error, the true position of Punta Burica being $82^{\circ} 53'$.

(5) REJECTION OF THE TREATY; VARIOUS INTERPRETATIONS OF THAT LINE.

The Congress of New Granada, still not satisfied with the great success of its clever plenipotentiary, sought to do even better, by approving the treaty on April 21, 1857 (Doc. No. 309), but with three "explanations." The first of these stated:

"That the River *Doraces*, *Dorces* or *Dorados*, designated by Art. 41 of the foregoing treaty as the terminus of the divisional line * * * is the *first river* which is found at a short distance to the south-east of *Punta Careta* (that is, the river of *Talamancas*); and that the questions arising at any time upon this point shall be determined in accordance with this declaration and what is shown by the Hydrographic Chart which was used during the negotiation of said treaty, the title of which is: *Carta esférica del mar de las Antillas y de la Costa de Tierra Firme* (Spherical Chart of the Sea of the Antilles and of the Coast of Tierra Firme), prepared in the Hydrographic Bureau and published by official order at Madrid, year 1805; corrected in 1809."

The Government of Costa Rica laid these "explanations" before the Congress of that Republic on September 30, 1857 (Doc. No. 310), with its objections thereto, and especially to the first, as essentially changing the treaty and leaving the demarcation of the boundaries in that part ambiguous. Thereupon the congress rejected these "explanations" entirely, and the treaty failed of ratification.

The "Spherical Chart" referred to by the neo-Granadian Congress (Map XVII), is a simple outline of the coast, without any indications as to the interior, and on such a small scale that it could not be used as a guide

for a demarcation requiring any degree of detail; and it is deemed more than probable that for the purpose of fixing the line the representative of New Granada exhibited the map of Chiriquí by Colonel Codazzi, as he was the one who invented the crest of the *Cordillera de las Cruces* in the concept of a frontier line.

(6) GENERAL CODAZZI THE AUTHOR OF THE GOLFITO—
CORDILLERA DE LAS CRUCES—CULEBRAS RIVER
LINE.

This allegation that Codazzi was the inventor of the frontier line above mentioned is evidenced by the note in the handwriting of that engineer on the margin of the original copy of the chorographic map prepared by him in person, in 1854, a note which is quoted literally by Señor Borda on pages 326 and 327 of his work above cited, as follows:

“The yellow line starts from the points decided upon on the coasts of the two oceans and runs in search of a *third point on the way from BUGABA to the village of BORUCA*. That road, which is a poor trail, passes by the *summit of the ridge of LAS CRUCES*, which has always been recognized by the Indians of Boruca and the residents of Bugaba as the divisional line between the two provinces, and they recognize and respect it even to this day; so it is that in the pastures of *Cañas Gordas* the inhabitants of Bugaba, a district of the Province of Chiriquí, have had cattle and in the *pastures of the Limón* the Indians of Boruca, of the State of Costa Rica; and it is noticeable that the unpopulated region extends in each case very nearly the same distance, from the *summits of the CORDILLERA DE LA CRUZ*, to the two localities inhabited, *BUGABA settled by Granadian Creoles and BORUCA by Indians of Costa Rica.*”

"From the *Cordillera de las Cruces*, to reach the summit of the Andes and then the headwaters and course of the *Dorados* or *Culebras* River, is a very natural and permanent line; but such is not the case in proceeding from the *Cordillera de las Cruces* to reach *Punta Burica*, since it is difficult to lay out a permanent line in a mountain region with quite an even configuration of hills and elevations until the chain of peaks is reached that terminates at *Punta Burica*. A more natural boundary and one easier of recognition at all times ought to be sought for, so as to avoid controversies later, which will be brought up by the residents who may inhabit what is now deserted. Therefore, *I would suggest the line marked in red which starts from the GOLFITO, by the river of that name, to its source, which is in the CORDILLERA DE LAS CRUCES*. This line has the advantage of not requiring engineers to recognize it."¹

The entire note of General Codazzi has been reproduced as it was copied by Señor Borda, because it serves to prove two points of great interest in this discussion, to wit (a) the identity or individuality of the range of Las Cruces, and (b) the fact that that engineer was the first to *propose* as a frontier for Costa Rica and Colombia the *Golfito-Cruces-Summit of the Andes-Culebras line*.

Codazzi asserts that the road from *Bugaba* to *Boruca* passes by the range of Las Cruces, which is situated almost equidistant from the inhabited places of *Boruca* and of *Bugaba*. Both of these points are on the Pacific slope, and the trail that connected them when Codazzi wrote was the same that connects them to-day. It is also the same trail that has connected them ever since the year 1601, when

¹"Note on the chorographic map of the Isthmus of Panama—prepared by the Engineer Colonel Codazzi in 1854 and inserted by the author on the margin of the original chart." (Note of Borda).

Don Gonzalo Vázquez de Coronado, by order of the Audiencia of Guatemala, opened such a path to the village of Jarijaba, which was situated on the southern flank of the last mountain that is passed in going down into the valley of the Chiriquí Viejo River, where he came in touch with the Veraguan frontier authority stationed in the village of Chiriquí¹, six leagues away. It is therefore evident that the said *Cordillera de las Cruces* is not the *Cordillera de los Andes*, which separates the waters that flow into the two oceans, but one of its ramifications, separating waters that flow into the Pacific.

This fact is confirmed by the differentiation which Codazzi himself makes between the crest of the *range of Las Cruces* and the top of the *Andes*, and also by the statement Codazzi makes that the origin of the Golfito River is in the *Cordillera de las Cruces*. It is furthermore a geographical fact, of which there is absolute evidence, that said *Golfito* does not take its rise in the *Andean* or *Main Cordillera*, for between the latter and the range on the southern flank of which the said river has its origin, there intervenes the broad and rich valley of the *Coto* or *Brus* River, a tributary of the *General* River or *Río Grande de Térraba*. This valley has been examined scientifically and was very thoroughly described by the Engineer Wm. F. Shunk, as a route for the International Pan-American Railway. To this valley belong the pasture lands of *Limón* and *Cañas Gordas*, referred to by Codazzi and appearing on all the modern maps, particularly that of Pittier, prepared in 1903 (Map B).

It is worthy of note that the author of the proposed *Golfito-Cruces-Andes-Culebras* frontier line, while he asked for the entire course of the two rivers in order to form a

¹ León Fernández, *documentos*, vol. V. p. 104.

part of the frontier line, *did not in any way adopt the backbone of the range of Las Cruces, or that of the Cordillera of the Andes*, to form a part of said line; he simply crossed them both at an angle in order to connect the sources of the two streams, which really are the lines he proposed as a basis for the frontier. This makes a connecting line which would naturally be understood as a straight one, inasmuch as there are no points specified that would convert it into an irregular one. This was the way the said frontier continued to be spoken of, from the time of Codazzi until the signing of the arbitration treaty by Colombia with the notice that, according to the Codazzi map, the *Golfo* and *Culebras* Rivers flowed, the former in a *north to south* direction and the latter *south to north*, which gave to the frontier line, between its two extremes, a *general north to south course, from one sea to the other*.

Coming back again to the "Spherical Chart," it appears that there is indicated thereon, under the name of the *Dorados* River, the first stream that is met with to the southeast of Punta Careta, at a short distance therefrom. And as the first river is the *Sixaola*, there can be no doubt that, according to the first explanation of the Congress of New Granada, the limit to which that republic aspired in the Atlantic Ocean could not under any interpretation extend beyond that selfsame *Sixaola* River.

Costa Rica had a very good reason for refusing to admit that the *Doraces* River of this treaty was intended to be or could fairly be identified with the *Sixaola* and *Tarire*; this is shown by the following observations.

(7) THE DORACES RIVER.

The denomination of *Doraces*, and its variants, *Dorados*, *Dorces*, was entirely unknown in the history, the cartog-

raphy and the documents relating to Costa Rica of the 16th and 17th centuries. All the chroniclers of that epoch may be minutely scanned, the contemporaneous geographical charts examined, and one by one the multitude of documents may be read over that recount the discovery, the pacification, the settlement and the vicissitudes of Costa Rica down to 1748, and not even the remotest reference will be found to the existence of a territory, a village, a river, a tribe, or even a chieftain, bearing the name of "*Doraces*," or one resembling it, within the territory of Talamanca, or what may be embraced therein according to the definition of Gabb; that is, between the Main Cordillera, the shore of the sea, the Tarire River and the Changuinola. The tribe of the *Doraces* Indians really did exist; but they were a long way from the Tarire River and even from the Changuinola. They had their villages to the south, between the Chiriquí Lagoon, and the cordillera of the same name, and their eastern boundary lay along the San Diego or Cricamaula River, with their western limit at the Buirra or Chiriquí River; so that if any river bore the name of *Doraces* it must naturally have been one of those that bounded the territory of that tribe or ran through the midst of it.

But in 1748 Señor Don Antonio de Ulloa CREATED THE DORACES RIVER and thought it proper to locate it immediately to the west of the Bay of Almirante; that is to say, he baptized with the name of "*Doraces*" the old *Estrella River*, which other contemporary mapmakers entitled, with better success—if no less arbitrarily—the *Culebras River*.

In various English and Spanish hydrographic and geographic charts, *Chánguenes* and *Dorados* were taken to

be synonymous, as, for example, on the map of Wyld in 1850 (Map XXIX).

Other cartographers, however, have disregarded the synonymity, therefore the Changuinola of the present day, situated immediately to the west of the Bay of Almirante, bears the name of Culebras; and they locate the *Doraces River* thereafter, but without confusing it in any way with the *Tarire*, to which another more appropriate name was applied in order that its identity might be free from all doubt—that of the *Río de los Talamancas*. So also, among many others, the chart of D'Anville, 1746 (Map VIII); that of Tomás López and Juan de la Cruz, of 1755 (Map IX), in which the name is written "Bocaces;" that of Bonne, of 1780 (Map X); another in the National Historical Archives of Madrid (Map XIX); that of Lapie, in 1806 (Map XVI); etc.

Costa Rica, therefore, was abundantly justified by the facts in refusing to accept any definition of the Doraces River which would identify it with the Sixaola, and rejected Colombia's proposed interpretation of the treaty as changing its true meaning.

CHAPTER V.

CONFLICTS AND TREATIES ARISING OUT OF THE QUESTION OF BOUNDARIES.

I. TREATY OF 1865 BETWEEN COSTA RICA AND COLOMBIA.

- (1) ASSERTIONS OF AUTHORITY BY COSTA RICA.
- (2) NEGOTIATIONS FOR THE SETTLEMENT OF
BOUNDARIES.
- (3) THE TREATY OF 1865; THE CASTRO-VALENZUELA
LINE.

II. TREATY OF 1873 BETWEEN COSTA RICA AND COLOMBIA.

- (1) JURISDICTIONAL CONFLICTS ON DULCE GULF AND
ON THE EASTERN SIDE OF THE LOWER SIXAOLA.
 - (2) CLAIM OF DOCTOR PRADILLA, COLOMBIAN
MINISTER TO COSTA RICA.
 - (3) TREATY OF 1873; THE MONTÚFAR-CORREOSO
LINE.
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I. TREATY OF 1865, BETWEEN COSTA RICA AND COLOMBIA.

- (1) ASSERTIONS OF AUTHORITY BY COSTA RICA.

The Calvo-Herrán Convention having failed of ratification, the Government of Costa Rica decided to regain possession of the territorial rights of the Republic, and provided, on March 10, 1859 (Doc. No. 314), for the

accession of the Archipelago of Bocas del Toro to the jurisdiction of Moín, the governor and commander of which was authorized to appoint military and police judges and to expel wrongdoers.

In the exercise of her sovereignty, and by the Law of July 9, 1860 (Doc. No. 317), Costa Rica authorized the construction of a railroad between *Bocas del Toro and the Gulf of Dulce*, under a contract made by the Executive Power with Mr. Ambrose W. Thompson, a citizen of the United States. The Commission officially appointed by the President of the United States to report upon the *practicability* of the railroad between Bocas del Toro and the Gulf of Dulce, submitted the result of its investigations to the Secretary of the Navy of the United States, in January, 1861 (Doc. No. 318).

(2) NEGOTIATIONS FOR THE SETTLEMENT OF BOUNDARIES.

The Colombians having occupied the shores of Burica (1862) and the Government of Panama having arranged for the leasing of the cocoanut groves on that coast, the Minister of Foreign Relations of Costa Rica directed the representative of the last-named republic at Washington (Docs. Nos. 320, 321), to take up with the new Granadian minister the settlement of the question of boundaries, since by the mere use of protests no progress had been made toward putting an end to the constant efforts of the latter “* * * to appropriate the valuable ports of Bocas del Toro and Dulce Gulf * * *.” As a matter of fact the two countries did start the negotiation of a treaty in March, 1865 (Doc. No. 322), in the city of Bogotá, Dr. Don José María Castro representing Costa Rica and Dr. Don Teodoro Valenzuela appearing on behalf of Colombia.

At the first conference, on March 6, Señor Castro proposed as a boundary, a straight line starting from *Punta Burica*, on the Pacific Coast, and terminating at the most advanced point on the eastern shore of the Island of *Escudo de Veragua*, in the Atlantic.

At the second conference, on March 15, Señor Valenzuela substituted the Calvo-Herrán line of 1856; but with the additions made by the neo-Granadian Congress of 1857, which Costa Rica had rejected.

(3) THE TREATY OF 1865; THE CASTRO-VALENZUELA LINE.

Notwithstanding the suggestions formulated by the representatives of the two republics were so widely apart, they were able in three more conferences to end the discussion and to come to an agreement whereby Señores Castro and Valenzuela, at Bogotá, on March 30, 1865 (Doc. No. 323), signed the "Treaty of Friendship, Commerce, Navigation and Boundaries, between the Republic of Costa Rica and the United States of Colombia," which treaty, as well as the divisional line embodied in it bears the names of its authors.

That line began at *Punta Burica* on the Pacific, and ran along the hills from that point toward the peak of Limoncito; thence, in a straight line to the sources of the Chiriquí Viejo River, at the highest part, where its waters have their origin; thence in an easterly direction along the crest of the Cordillera which separates the waters of the two oceans, passing by the peaks of *El Picacho*, *La Horqueta*, *La Playita*, *El Hornito* and *Santiago*, to the source of the Cañaveral River; and thence by the main channel of this river to its outlet in the Atlantic Ocean.

The line of connection, therefore, between Punta Burica and the point next to the Island of Escudo de Veragua, coincided with the line claimed by the Plenipotentiary of Costa Rica, except that it was not straight, being broken by the Main Cordillera, and it will be observed that it left within Costa Rica the Bay of Almirante and the Chiriquí Lagoon on the north and the Gulf of Dulce on the south; that is to say, it followed the line which among all those claimed by Colombia, most nearly conformed legally and historically to the truth.

That treaty was approved by the Executive Power and by the Senate of Colombia, and also, on its first reading, by the House of Representatives; but the Session of 1865 came to an end and left its second reading for the legislature of 1866, by which it was rejected for reasons entirely unrelated to the boundary question.

II. TREATY OF 1873 BETWEEN COSTA RICA AND COLOMBIA.

(I) JURISDICTIONAL CONFLICTS IN DULCE GULF AND ON THE EASTERN SIDE OF THE LOWER SIXAOLA.

On January 25, 1870 (Doc. No. 324), the Minister of Foreign Relations of Costa Rica addressed himself to the Secretary of the State of Panama, complaining that, as he had been informed by the Political Chief of Dulce Gulf, a commission composed of four persons sent by the authorities of Chiriquí, had appeared at the little hamlet of La Esperanza, and had stated that thenceforth not only that hamlet but the territory as far as the middle of the Gulf was to be embraced within the territory of Panama, that State having so provided. The commission thereupon proceeded to take a list of the cattle for the

purpose of levying the corresponding tax upon the residents. The Minister further complained that, as he had also been advised by the Captain of the Port of Moín, officials coming from Bocas del Toro had been stationed at the mouth of the Sixaola River; " * * * a territory, like that of the Dulce Gulf, not disputed to Costa Rica in any of the negotiations concerning boundaries * * *."

The President of the State of Panama, Don Buenaventura Correoso, replied on the 21st of May following (Doc. No. 325), stating that although this was a matter pertaining to the Government of the Colombian Union, he had undertaken to inform himself thereon, and regretted to state that grave events had occurred, consisting of forcible acts committed by the emissaries of the Costa Rican officials, who had improperly sought to exercise jurisdiction in those territories which were Colombian. On account of these acts the President of the State of Panama asserted that: " * * * the River *Culebras*, called also *Doraces* or *Dorces* * * *," was the divisional boundary upon the Atlantic, and that the Colombian village of *Sixaola* was situated *on the eastern side of the river of that name*" (the right side going down stream).

The Minister of Foreign Relations of Costa Rica, Señor Montúfar, in a note addressed to the Minister of the United States of Colombia, on June 11, 1870 (Doc. No. 326), brought to his knowledge what had occurred and explained the historical reasons and the legitimate possession upon which his government relied. He further asked that the *status quo* be maintained and denounced the reported purpose of certain persons from Panama to make an attack on Costa Rican officials " * * * at a point which has always belonged and does belong to Costa Rica: the RIVER SIXAOLA."

(2) CLAIM OF DOCTOR PRADILLA, COLOMBIAN MINISTER
TO COSTA RICA.

The distinguished statesman, Don Antonio M. Pradilla, having been appointed by the Government of Colombia as Minister Plenipotentiary to Costa Rica, with instructions to settle the pending differences as to the boundary question, presented to the Minister of Foreign Relations of the latter country a diplomatic note, dated at San José on October 20, 1871 (Doc. No. 329), in which he reproduced the claim made by his government in its note of August 10, 1870, arising out of certain acts which had been committed in Sixaola, during April and May of that year, by some persons in the employ of the Government of Costa Rica or acting under its authorization. He made the further claim, which is copied in full because essential to a proper understanding of the *status quo* and the view held by Colombia as to the boundary question:

"A person called Santiago Mallas or Mayay,¹ entitling himself the agent of the Government of Costa Rica, has pretended to exercise acts of jurisdiction in the settlement of Changuinola, which, as H. E. knows, is located on the west of the *River Doraces*, the boundary between this Republic and that of Colombia as the Government of the latter maintains. Colombia has at all times been in the possession of *Changuinola*; and although Costa Rica also thinks it has a right to the territory in which this settlement is situated, such possession ought to be respected, not only because by Art. 7 of the treaty celebrated between the former Colombia and Central

¹This person was the *cacique* or chieftain of that name, the political chief of the Government of Costa Rica in the territory of Talamanca, to whom the Minister of Foreign Relations of Costa Rica referred, in the note addressed to the Colombian Minister dated June 11, 1870 (Doc. No. 326).

America on March 15, 1825, the two Republics were obligated to respect their boundaries, as they then were, but also because it is in the interest of both, in order to avoid complaints and reciprocal claims, to recognize their respective possessions in the condition in which they are, so long as their boundaries are not definitively fixed."

Señor Pradilla, in his note to the Government of Costa Rica, asked that a reprimand be administered in consequence of these acts, and sent supporting documents.

One of these documents is the official communication which Señor Iglesias, the Political Judge of *Bocas del Toro*, sent to the Prefect of the Department of Colón, on June 27, 1871 (Doc. No. 329), directing him to bring it to the knowledge of the President; in this he gave a detailed account of the acts committed in the settlement of Changuinola by the so-called agent of the Government of Costa Rica. Señor Iglesias thereupon, in order to show that Costa Rica had no jurisdiction in the settlement of *Changuinola*, says:

"That the River Changuinola belongs to the Sovereign State of Panama there is no doubt, its mouth being situated only eight miles to the west of that of the *Drago* and thirteen [not thirteen, but seven and a half] to the east of that of the *Sixaola*, where the controversy was last year with Costa Rica; SO THAT IF THE LATTER DOES NOT BELONG TO IT FURTHER THAN THE WESTERN SLOPE OF ITS MOUTH, SINCE THE SIXAOLA IS THE SAME RIVER CULEBRA, which marked the boundaries of Costa Rica in the time of the former Colombia, with much less reason the one called *Changuinola*, which is distant from the latter thirteen miles to the east, as has been stated * * *."

The Costa Rican Minister of Foreign Relations replied, October 28, 1871 (Doc. No. 330), stating that his government could recognize no other limits than those fixed by the Treaty of Bogotá, of March 15, 1825; and after various notes in which the plenipotentiary of Colombia insisted upon his demands—relying also for support on this treaty which he considered as in force—the Minister of Foreign Relations of Costa Rica ended by saying, in his communication of December 9, 1871 (Doc. No. 333) that—

“* * * if the incidents of *Sixaola* and *Changuinola* are to lead us to the examination of the documents which justify the right and the possession; and if these documents can be no others than those which accredit the best right to the property acquired and co-existing at the time independence was secured, it would be most natural to put aside the question presented and enter at once upon the principal one of boundaries.”

To this Señor Pradilla replied, on the 13th of the same month (Doc. No. 332), that in view of this statement he would forward the document to his government, so that it might decide whether these claims were to be pursued or disregarded, and whether the boundary question was to be taken up.

(3) TREATY OF 1873; THE MONTÚFAR-CORREOSO LINE.

Señor Pradilla having been retired, the Government of Colombia accredited General Don Buenaventura Correoso, ex-President of the State of Panama, to San José as Minister Plenipotentiary. Thereupon, Señor Correoso and Señor Montúfar, the Minister of Foreign Relations of Costa Rica, succeeded in coming to an understanding, and in April, 1873, they concluded the boundary treaty

(Doc. No. 334), by Art. 1 of which the following divisional line was established, a line

“* * * which, starting from the coast of the Pacific Ocean at Punta Burica * * * proceeds in a straight line by the peaks of the range from the said point, until reaching the source of the River San Bartolomé; from there, also a straight line, across the Cordillera, until reaching toward the north the source of the River *Bananos*; and from that point, following the course of said river, to its outlet in the Bay of Almirante.”

This line was less favorable to Costa Rica than the one of 1865, but she still kept, with the Gulf of Dulce, a part of her dominion over the bay of Almirante.¹

The Senate of Colombia rejected this treaty and Señor Montúfar was criticised very severely in Costa Rica, because it was believed that in an excess of a spirit of harmony he had yielded too much.

¹Because of its special importance, a Memorandum is printed, written by General Correoso and dated August 30, 1873 (Doc. No. 336), concerning the various questions discussed between him and the Costa Rican diplomat, Doctor Montúfar.

CHAPTER VI.

AGREEMENTS FOR INTERNATIONAL ARBITRATION.

I. ARBITRAL CONVENTION OF 1880.

- (1) THE QUESTION OF THE BURICA COCOANUT GROVES.
- (2) CORRESPONDENCE BETWEEN THE MINISTERS OF FOREIGN RELATIONS OF COLOMBIA AND COSTA RICA CONCERNING THE STATUS QUO AND INTERNATIONAL ARBITRATION.
- (3) CONCLUSIONS OF THE COLOMBIAN SENATE AND PROCLAMATION BY PRESIDENT NÚÑEZ.
- (4) THE CASTRO-HOLGUÍN CONFERENCES AND NOTE OF DR. CASTRO, MINISTER OF FOREIGN RELATIONS OF COSTA RICA.
- (5) CELEBRATION OF THE AGREEMENT OF 1880. ONLY ONE QUESTION AT ISSUE—THAT RELATING TO BOUNDARIES.

II. ADDITIONAL CONVENTION OF 1886.

- (1) CONFIRMATION OF THE SPANISH ARBITRATION.
- (2) OPPOSING CLAIMS OF THE PARTIES.

I. ARBITRAL CONVENTION OF 1880.

The republics of Costa Rica and Colombia, having been persuaded that they could not come to an agreement in regard to the location of their boundary lines, desisted from further efforts to establish them directly by means of treaties, and undertook to secure that end by arbitration agreements, beginning with that of 1880.

(I) THE QUESTION OF THE BURICA COCOANUT GROVES.

The question of making use of the groves or plantations of cocoanut trees at Burica led to serious disturbances in the relations between the two governments, one of which brought them to the brink of war and was the occasion of the Arbitration Agreement of 1880.

On June 11, 1875 (Doc. No. 339), the Minister of Foreign Relations of Costa Rica laid before the Foreign Office of Colombia the fact that the *Cabildo* (Town Council) of Alanje had leased the cocoanut groves of Burica, situated between the point of that name and Dulce Gulf, had imposed taxes upon the residents of a place called *Corredor* and had also leased pastures belonging to the same neighborhood, and he protested against such acts as indicating a disregard for the jurisdictional limits of Costa Rica.

The Secretary of Foreign Relations of Colombia replied, on May 16, 1876 (Doc. No. 341), transmitting the report of the Secretary of State of Panama, in which the latter declared that the *Cabildo* of Alanje had the right to lease the cocoanut groves of Burica, belonging to the State of Panama, and that the little hamlet of *Corredor* had been established by former residents of Alanje.

On July 25 of the same year (Doc. No. 342), the Costa Rican Minister of Foreign Relations, passing over these explanations, rejoined that, as the boundary treaty had not been approved, the *status quo* as to the divisional line, that is to say, a straight line between Punta Burica and the Escudo de Veragua continued unchanged; and that in order to settle definitively the question as to boundaries, he proposed its submission to the arbitration of a friendly nation such as the Republic of Chile.

In July, 1879 (Doc. No. 344), the Government of Panama communicated to the governments of Colombia and Costa

Rica the fact that the Costa Rican official of Dulce Gulf had occupied Colombian territory where the cocoanut groves of Burica were situated and had sent away the functionary stationed there by the Alcalde (Mayor) of Alanje, establishing another in its stead. The Secretary of Foreign Relations, on August 19, following, forwarded this notice, with his protest (Doc. No. 345) to the Secretary of Foreign Relations of Costa Rica, who responded, on the 27th of October (Doc. No. 346), to the effect that his government had not occupied any portion of the territory of Colombia, and that if any misunderstanding had arisen between the officials of Dulce Gulf and Chiriquí, it had been occasioned through the lack of a physical demarcation of the frontier. During the first six days of November (Doc. No. 348) a full investigation was held at Dulce Gulf wherein various witnesses were examined; the result showed that the occurrences had grown out of the fact that the Prefect of Chiriquí had sent a squad of troops across the frontier to protect the lease of the cocoanut groves made by the Alcalde of Alanje, with orders to seize and bind all gatherers of cocoanuts and any person acting as commissioner for that locality on behalf of Costa Rica.

(2) CORRESPONDENCE BETWEEN THE MINISTERS OF
FOREIGN RELATIONS OF COLOMBIA AND COSTA RICA
CONCERNING THE "STATUS QUO" AND INTERNA-
TIONAL ARBITRATION.

In the despatch of August 19, 1879 (Doc. No. 345), referred to, Don Luis Carlos Rico, Secretary of Foreign Relations of Colombia stated that in the correspondence exchanged between the two governments during 1876 the principle of respect for the *status quo* as to the question of boundaries had been established, and that Colombia

had accepted willingly the idea of submitting that question to the decision of an arbitrator, trusting that the incident which had occurred on the frontier would not give rise to the fatal situation which it was feared might develop between the two nations.

The Costa Rican Minister of Foreign Relations, in the despatch cited of October 27 (Doc. No. 346), replied that his government had given its officials orders to respect the *status quo*, and had instructed him to suggest as arbitrators, the President of the United States, the King of the Belgians, or some other satisfactory person; to this Señor Rico, in his communication of December 18 (Doc. No. 347), agreed, intimating, however, that for the designation of an arbitrator it would be necessary to have the consent of the National Congress of Colombia, to which, he said, the matter would be submitted as soon as that body should convene.

Although both governments were in accord as to the *status quo* and the settlement of the boundary question by arbitration, nevertheless jurisdictional conflicts ensued, as shown by the complaints presented by Costa Rica in the despatches of March 12 (Doc. No. 350), May 15 (Doc. No. 353), June 15 (Doc. No. 357) and July 16 (Doc. No. 355), 1880.

The trouble arose from the different interpretations of the *status quo*.

In his note of April 20, 1880 (Doc. No. 352), Señor Rico informed the Minister of Foreign Relations of Costa Rica that—

“* * * the demarcation of the boundary between your Republic and that of Colombia, which Your Excellency sets up in the note mentioned of July 25, 1876 [Doc. No. 342], that is to say, following a straight line from the *Punta de Burica*, upon the Pacific, to the *Escudo de Veragua*, in the Atlantic, is not, nor can it be, the divisional line between the

two Republics, and much less can it serve as a basis for the preservation of the *status quo*. In view of the fact that Your Excellency has not yet been given the answer promised in this Department's note of September 25, 1877, touching upon the *status quo* of the pending questions relating to the boundaries between the two countries—a *status quo* which has not been altered by the negotiations entered upon at different times, and which the two governments are in accord in not altering—I should say to Your Excellency that on that date the Government of Colombia did not find it convenient to protest against that demarcation of territory which Your Excellency proposed in your above mentioned note, for the reason that it was not imagined that the government of that republic, in fixing upon the boundaries mentioned between the two nations, could have had in mind anything more than the prompt formulation of its claims, with no thought, however, of attempting in any way to enforce them as it has succeeded in doing, in flagrant violation of the rights of this country and without awaiting the reply of this government. By virtue of the *uti possidetis* of 1810, and firmly based upon authentic and irrefutable documents, the boundaries of Colombia extend on that side as far as Cape Gracias a Dios, embracing all of the Mosquito Coast on the Atlantic, and as far as the Golfito River on the Pacific; but for the preservation of the *status quo*, which both governments have agreed not to alter pending the arbitral decision, my government maintains and insists that the boundary line that should separate the two republics during the period in which the boundary questions remain pending is the following, on the Atlantic side: The main course of the Culebras River as far up as its sources, following a line along the summits of the Las Cruces range to the mouth of the Golfito River in the Gulf of Dulce on the Pacific. This government looks upon any act of jurisdiction by Costa Rica on the farther side of that boundary as an act of usurpation."

Dr. Castro, Minister of Foreign Relations of Costa Rica, answered the foregoing on June 10, 1880 (Doc. No. 358), as follows:

"If the question of ownership, reserved for the arbitration, were to be discussed now, it would be easy for me, Mr. Minister, to produce in evidence the invincible titles which support Costa Rica in the dispute; but the proprietorship is not under discussion; the question is simply one of *possession*, and as the possession is a fact, Your Excellency will permit my expression of surprise that the *status quo*, having been already accepted for more than a half century, pending the obtaining of definitive dominion by an arbitral decision, Your Excellency now traces *fanciful demarcations, having no basis in history, nor in possession, immemorial or even consented to* * * *."

He explained that, before the Royal order of 1803, there could have been no doubt concerning the limits of both Spanish possessions; that that Royal order was transitory in character and without legal effect; that the independence of Costa Rica was recognized by Spain in the Treaty of 1850, with the limits she had when she was a Spanish province, that is, from sea to sea; and he added:

"The line which determines the *status quo* has been traced, not only by Costa Rica, but also by Colombia; for from the moment that the latter did not claim the immediate and provisional possession of the territory (to which this Royal order of 1803 referred) * * * it impliedly accepted as the *status quo* the regulation of the boundaries as they were prior to 1803, and which we consider as the only one in existence before and after that date. And it did very well to accept it, because it would have been excessive to claim that a territory which had never ceased to be an integral portion of Central America, should be considered as having been in the possession of Colombia in 1825,

when both countries agreed to respect the state of things then existing."

Dr. Castro then goes on to cite various cases to demonstrate that during the course of many years Costa Rica had performed numerous acts of possession against which, however, no protest had been made, and in closing declared:

"* * * but it does not come within my purview to give to these facts an importance and value equal to the weighty considerations to which I have referred and which consecrate the possession of Costa Rica, nor does it come within it to admit, for instance, that the occupation of Bocas del Toro carried out by Colombia, and tolerated by Central America, could change what in legal terms should be called *the state of things*. Not by acts, but by reasons of justice that are invincible, my government maintains and asserts that the line of the *status quo* is the one which, starting from *Punta Burica*, goes straight to the *Escudo de Veragua*; and that any act of jurisdiction exercised by Colombia on the side beyond those limits, must be considered as an act of usurpation."

(3) CONCLUSIONS OF THE COLOMBIAN SENATE AND PROCLAMATION BY PRESIDENT NÚÑEZ.

On July 13, 1880 (Doc. No. 356), the Senate of Plenipotentiaries of the United States of Colombia adopted the following conclusions:

"1. Colombia has, under titles emanating from the Spanish Government and the *uti possidetis* of 1810, a perfect right of *dominion* to, and is in possession of, the territory which extends toward the north, between the Atlantic and Pacific Oceans, to the following line: *From the mouth of the River Culebras upon the Atlantic, going upstream to its source; thence a line along the*

crest of the range of Las Cruces to the origin of the River Golphito; thence the natural course of the latter river to its outlet into the Gulf of Dulce in the Pacific."

The description of this frontier line was evidently inspired by the proposal that General Codazzi had made for the frontier between Costa Rica and Colombia in his note written on the original of the map of the State of Panama, which was prepared by that engineer in 1854, the only variation being the suppression in the copy of the mention made by Codazzi of the summit of the Andes, which must of course, be crossed, since the range of Las Cruces belongs on the Pacific watershed. In any event, whether that omission be supplied or not, the line proceeds from the headwaters of the *Culebras* River to the sources of the *Golphito* River by a straight course, there being no data given for connecting the two extremities by a curved line.

It is well to note that, according to the map of Codazzi, the *Culebras* River, which has at least eight tributaries on its left bank, takes a *south to north* direction and flows directly away from the northern edge of the *Cordillera de las Cruces*, which range being confused with the *Main Cordillera* on that edge, runs from north to south, with an inclination to the west at the separation of the waters of the *Golphito* and *Coto* Rivers, which are affluents to the *Gulf of Dulce*.

Turning again to the Conclusions adopted by the Colombian Senate:

"2. Colombia holds titles which accredit its right, emanating from the King of Spain, to the ATLANTIC LITTORAL, embraced between the mouth of the River *Culebras* and Cape *Gracias a Dios*."

This Conclusion was disregarded entirely by the President of Colombia, Dr. Rafael Núñez, in his proclamation (Doc. No. 361) to the nation, which will be spoken of later.

"3. Colombia has been in the uninterrupted possession of the territory embraced within the limits indicated in Conclusion 1."

This Third Conclusion indirectly—but no less conclusive because indirect—establishes the exceedingly important fact that the *Culebras* River, to which the First and Second Conclusions above quoted refer, is not the Tarire or Sixaola River—at least not in its entirety, for this Third Conclusion clearly states that Colombia *had been in the uninterrupted possession* of the territory extending from the mouth of the *Culebras* River on the Atlantic, upstream, to its source. And since it is an incontestable fact (against which Colombia never has raised the least question) that *Costa Rica* has had full, peaceful and uninterrupted possession over the vast territory known under the name of the "*Central Valley of Talamanca*", and its dependencies, the valley of *San José de Cabécar*, the valley of the *Upper Telire*, and others, situated on either bank of the Tarire—valleys which have been scientifically explored by the commission headed by the learned William M. Gabb, provided with officials acting in obedience to *Costa Rica*, and endowed with parishes laid out by the Bishop of the diocese—valleys in which *Costa Rica* has often maintained a public military force and a police force constantly, in which every attribute of national sovereignty has been drawn into service by documents published in the official journal of the Republic and carried out in a most open manner and without objection by anyone—it is evident that such territory of the Central Valley of Talamanca and its dependencies,

as far as the Yorquín River, *is not and cannot be the same* as that referred to in the Third Conclusion of the Congress of Plenipotentiaries of Colombia as being in the uninterrupted possession of that Republic and *bounded by the Culebras River from its mouth to its sources*.

The demonstration may be reduced to the following syllogistic form: The territory bounded by the *Culebras River*, from its sources to its outlet in the ocean, was held without interruption by Colombia; it is also true that along the greater portion of the *Tarire* and *Sixaola* Rivers the state that unquestionably had possession of the territory bordering on that stream, on either of its banks, was Costa Rica; therefore, the *Culebras River* is not and cannot be the *Tarire* and *Sixaola* Rivers.

In other words, it is not desired to raise any question here concerning Colombia's official assertion of her possession at that time to the *Culebras*; nor is it possible to question the fact of the peaceful possession by Costa Rica of the *great valley of Talamanca*. The only thing, therefore, that can reconcile this conflict is to differentiate between the *Tarire* (or *Sixaola*) and the *Culebras River*; and the differentiation goes to the extent of admitting that the *Tarire* (or *Sixaola*), in part, or, rather, in its lower reaches, may be identified with the *Culebras* (in the opinion of Colombian writers), and that the *Yorquín River* is the natural continuation of the said *Culebras* as far up as its source. Such a solution would accord with the Colombian claims to peaceful possession—or, more accurately speaking, unauthorized occupation—of the lands bounded by the *Culebras* from its outlet to its headwaters; it would respect the very evident and uncontradicted fact of the Costa Rican possession of *Talamanca*; it would harmonize with the course that the Colombian maps, without a single excep-

tion, give to the stream discussed, which stream flows from south to north, and with the nomenclature of some maps that are not Colombian, such as that of Bovallius (Map XXXV) on which the Yorquín River is named *Culebras* or *Dorados*.

When the engineers of the Panama Canal Company, headed by Monsieur Gaston Crozes, engaged in the survey of the vacant lands granted by Colombia to that corporation, after following the right bank of the Sixaola until they came to the junction of the Yorquín, they undertook to cross this latter stream in order to proceed with the survey up the stream [of the Tarire; but on being prevented by a Costan Rican military guard, the crossing of the Yorquín was abandoned and the survey was continued along the right bank of this last named river as far as it was navigable. From that point they ran a straight line toward the peak of Róvalo. Costa Rica's indisputable possession in Talamanca was thus respected up stream along the Yorquín; and in the correspondence exchanged between the two governments growing out of these events it was expressly stated that the land survey did not entail any recognition of sovereignty in favor of Colombia, since the character of the lands in dispute was preserved. It is worth noting that in their correspondence Colombia did not make any protest against Costa Rica for having, by means of a military force, prevented the invasion of the territory of Talamanca, by way of the Yorquín River to the west.

It appears by the correspondence of the Minister of Costa Rica at Paris, addressed on October 5, 1888 (Doc. No. 375), to the Minister of Foreign Relations of Costa Rica, that the Minister of Colombia in that capital, General Posada, advised of the foregoing, had stated on several occasions to the Minister of Costa Rica that his

government respected the *status quo*, and that, consequently, the Colombian engineers, Arango and Bravo (who were the ones that made the said survey), as soon as they were notified by a Costa Rican officer that that place (the mouth of the Yorquín) was the territory of Costa Rica, yielded and did not go forward. The fact should be recalled that Monsieur Crozes called on Señor Aycardi, Governor of Panama, and gave him an account of the encounter he had had with the Costa Rican guard at the junction of the Yorquín and the Sixaola. At first the governor paid no attention to the matter, but afterwards he sent a messenger on board of the French steamer in which Monsieur Crozes was sailing for Europe and asked him to delay his voyage, as he wanted to secure information in regard to this encounter. Monsieur Crozes, however, could not wait; but from La Guaira, in Venezuela, he wrote at length to the governor in regard to the occurrence. Moreover, both Arango and Bravo were able to furnish him with the most minute details and doubtless this was done by them, so that the Colombian authorities must have been well informed about the affair.

The Fourth and Fifth Conclusions read:

"4. In 1874 the Prefect of Dulce Gulf claimed that the cocoanut groves of Burica belonged to Costa Rica. * * * Such a pretension was rejected in an official manner by the Prefect of Chiriquí * * *."

"5. With the previous approval of the Senate of Plenipotentiaries, the Government of Colombia has required of that of Costa Rica that the jurisdictional status quo to which reference is made in Conclusion 1 be respected until the boundary question is decided by arbitration or in some other friendly method, and stated that it would consider any administrative act, beyond that demarcation, as a violation of its rights, or in other words as a usurpation."

This Fifth Conclusion comes as a corroboration of the observations made in considering the Third Conclusion. From the minutes of the conferences preliminary to the Arbitration Treaty of 1880, it will be seen that the person charged by the Colombian Government with the settlement of the differences between it and the Government of Costa Rica, did not utter a single word that could be interpreted to mean that the Colombian Government had any reason for complaint against that of Costa Rica for the effective and active occupation, manifest and solemnly maintained—of the territory of Talamanca. Doctor Holguín suggested to the Minister of Foreign Relations of Costa Rica, Doctor Castro, a formula for an arrangement, the important portion of which is contained in the following terms:

“The Government of San José to notify officially the political superior official of Dulce Gulf, in a note which shall be published in the *Gaceta* (the official journal) that the said government, being about to enter into a definitive arrangement with the Government of Colombia concerning boundaries, the two countries, in the meantime and until such time as the desired conclusion might be reached, had agreed to preserve the jurisdictional *status quo* in the regions as to which there should be any controversy. That in virtue thereof the said government notifies him that he is to restore things *in the territory of Punta Burica* to the condition in which they were before July, 1879, withdrawing to Isola¹ any public official or public functionary who may have been established during the past year beyond that settlement and placing no obstruction in the way of the execution of the public sale of the right to take cocoanuts from

¹The point known as Isola is situated at a considerable distance to the east of the Golfito River.

the cocoanut groves of Punta Burica, undertaken by the municipal corporation of the district of Alanje, belonging to the State of Panama."

NOT ONE WORD APPEARS IN THAT FORMULA WITH REFERENCE TO TALAMANCA. The instructions given to Dr. Holguín by the Secretary of Foreign Relations of Colombia on July 16, 1880 (Doc. No. 360), were published; but therein also, NOT A SINGLE WORD IS TO BE FOUND WHICH SIGNIFIES A COMPLAINT OR DEMAND BY COLOMBIA AGAINST THE POSSESSION BY COSTA RICA OF TALAMANCA. Looking, for instance, at the summary or ending of those instructions, there is found the statement that—

"The Government of Colombia being desirous of giving to the matter such a shape that it may lead to a fraternal solution, has determined that you, instead of going directly to England, will first go to San José de Costa Rica, and, after first making the explanations which give rise to this statement, will show to the government of that country that, as a matter antecedent to any discussion and any action that can bring this disagreeable question to a friendly termination, the Government of Colombia proposes that both countries respect the jurisdictional *status quo*, and that in consequence the Costa Rican authorities *placed in the cocoanut groves of Burica* must be immediately withdrawn and the exploitation of the plantations in that region restored to the individual to whom they belong in virtue of the public sale made by Colombia officials in the district of Alanje.

"Respecting the settlement of Isola, you will not make such a requirement, because there was no protest made at the time against the establishment of Costa Rican authorities in that place; and although

this government does not accept the territorial modification which that act implies, it leaves its arrangement for a definitive agreement, since it considers that this tolerated occupation *would not now be voluntarily changed by Costa Rica*, except by virtue of agreements which shall end the discussion in all its parts; and a break over an act *consented to for six years* would not be very well justified."

NEITHER WILL ANYTHING WHATSOEVER BE FOUND in the warlike manifesto of President Núñez, dated the 6th of September in the year cited, FROM WHICH ANY OBJECTION MAY BE INFERRED BY THE COLOMBIAN GOVERNMENT AGAINST THE AFORESAID POSSESSION OF TALAMANCA BY COSTA RICA. It is stated very clearly in the following paragraphs of that proclamation (Doc. No. 361) that—

"The Nation is advised that at the session of July 13 last, on account of the occupation having come to its knowledge by Costa Rican authorities of a portion of the Colombian border territory called *Punta de Burica*, the Senate of Plenipotentiaries, after mature examination, approved, among other things, the following five conclusions:

* * * * * * *

"Almost immediately afterwards, and with this last conclusion in view [Conclusion 8], my government sent its distinguished representative to Costa Rica, charged with the request to the Government of that Republic that the jurisdictional *status quo* be respected and consequently the withdrawal of the Costa Rican officials actually located at *Punta de Burica* at the close of the year previous."

Finally, by the order of September 10, 1880 (Doc. No. 362), communicated by the Minister of Foreign Relations of Costa Rica to the Colombian foreign office in a note of

the same date, it was sought exclusively to provide that the jurisdictional *status quo* be preserved in the regions where differences might arise IN THE TERRITORY OF PUNTA BURICA, in the same state as before July, 1879, AND NOT EVEN THE MOST REMOTE ALLUSION WAS MADE TO TERRITORIES SITUATED ON THE ATLANTIC SLOPE. This was not due to inadvertence; it was the result of reflection, for, as has been seen, if the Colombian Government instructed its Minister not to require from the Costa Rica Government the withdrawal of the official it had stationed in the little hamlet of Isola lying to the east of the Golfito River—because of the fact that having been there six years Costa Rica would not consent to his being sent away, and that a break would not be justified on the part of Colombia, it is clear that in discussing the possession of Talamanca, which was not a matter of recent date, but a right sustained by history from the time of the conquest, this could hardly be a subject for demands on the part of Colombia, who had at all times respected that possession.

The final Conclusion of the Colombian Senate was:

“8. Any further step to put an end to the controversy as to boundaries with Costa Rica must be preceded by the evacuation of any portion of territory in which that nation may have established its authorities beyond the limits marked out in Conclusion 1.”

In harmony with what was said in discussing the Fifth Conclusion, the Colombian Government did not demand, nor could it demand, Costa Rica's abandonment of the territory of Talamanca, and therefore the Tarire River, which crosses that territory, is not the *Culebras*, which, according to the First Conclusion, bounds the territory over which Colombia claims to have a perfect right of possession and ownership.

(4) THE CASTRO-HOLGUÍN CONFERENCES AND NOTE OF
DOCTOR CASTRO, MINISTER OF FOREIGN RELATIONS
OF COSTA RICA.

The Conclusions of the Senate having been communicated to the Secretary of Foreign Relations of Colombia, the latter confided to Don Carlos Holguín the confidential mission of seeking to reach an understanding with the Government of Costa Rica, under the instructions signed on July 16, 1880. In these instructions he was charged to demand, as a condition precedent to any friendly arrangement, the immediate withdrawal of the Costa Rican official stationed at the *cocoanut groves of Burica*, and the restoration of the use of those plantations to the District of Alanje; and he was further charged that if this was secured, he should promise to at once take up the definitive settlement of the boundary question, either directly or by arbitration.

It would be absurd and impossible to explain why the President of Colombia should have appealed to the nation and hastened with his Ministers of War and Foreign Relations to the neighborhood of the frontier so as to better attend to the defense of the national territory, and contented himself with securing the withdrawal of the Costa Rican authority then recently stationed at Burica, and *leaving in their places the established authorities in Talamanca*, if this latter region could have been understood as included in what was possessed by Colombia "from the mouth of the River Culebras upon the Atlantic, going upstream to its sources."

Señor Holguín and Dr. Castro, the Minister of Foreign Relations of Costa Rica, held a conference in San José, on August 23, 1880, at which (as appears from the protocol of that conference), after the former had set forth the claim

of Colombia, the latter defended the Costa Rican jurisdiction as far as Punta Burica, relying upon the *status quo* established by the Treaty of 1825; nevertheless he stated his desire to avoid any cause for misunderstanding that might delay arbitration. This response was forwarded by Señor Holguín to his Government, and, although it was animated by a conciliatory spirit it did not seem to be very satisfactory to the latter.

However, after the publication of the warlike *manifesto* by the President of Colombia, on September 6, 1880, Doctor Castro, on the 10th of the same month, addressed a note to the Minister of Foreign Relations of that Republic (Doc. No. 362), in which he said:

"In accordance with the understanding between the Government of this Republic and the Confidential Agent of your Government, Doctor Don Carlos Holguín, I have addressed to the Political Chief (Jefe Político) of the Gulf of Dulce, under date of yesterday, the order of which the text is as follows:

"The Government of this Republic, being about to enter into a definitive settlement concerning boundaries with that of Colombia, and both having agreed until the desired conclusion is reached that the jurisdictional *status quo* shall be preserved in the regions where differences may arise, I provide that you may restore things in the territory of *Punta Burica* to the state they were before July 1879, without its implying, however, any recognition of rights upon the part of either of the two nations."

As will be noted, this direction by Dr. Castro was addressed solely to the *Political Chief of the Gulf of Dulce*, and not in any way to the corresponding officer in Talamanca, or to any other Costa Rican official; for it was *only in the region of Burica*, on the Pacific, that any jurisdic-

tional differences had arisen. On the other hand, the status of things directed to be re-established on Dulce Gulf was that corresponding to the period prior to 1879. *In that crisis Costa Rica's possession in Talamanca was respected by Colombia, as it had been before and as it continued to be after that time.* It is evident, therefore, that the said territory of Talamanca formed no part of the territory to which the First, Third and Fifth Conclusions of the Colombian Senate referred with so much emphasis.

In corroboration of this reference is made to another proclamation addressed to the nation by President Núñez, dated December 10, 1880, in which the following views were expressed:¹

"The Government of Costa Rica, in a spirit of fraternity and justice, certainly very worthy of praise and even of gratitude on our part, hastened to make amends for the momentary offense, as soon as it could be convinced that the indiscreet action of its subordinate agents was so considered.

"The temporal and confidential mission, so skilfully carried out, with which he [Dr. Holguín] was charged, that of asking for the *evacuation of our territory*, has been superseded by another which must be undertaken by diplomatic discussion, that of the final settlement of the general question of boundaries, which will eventually be submitted to arbitration, in accord with the resolution of the Senate of Colombia at its last session. * * * The warlike preparations demanded of us by that care for exterior security of the Republic which could not be disregarded, having now no object, it has been ordered, in consequence, that the army be reduced within a limit that seems for the present indispensable for the strict maintenance of domestic peace, without which all constitutional liberties are endangered and no development is possible however modest it may be."

¹Foreign Relations of the United States, 1881, pp. 343, 344.

The views above expressed are absolutely irreconcilable with an improper possession in Talamanca by Costa Rica, for that nation was in the actual exercise of such possession, as is shown by many documents which are reviewed herein elsewhere; and such possession, perfectly well known by Colombia, was scrupulously respected.

A most eloquent demonstration of this fact is the singular manifestation of cordiality and good understanding between Costa Rica and Colombia, and their respective governments, which appears in the protocol of the conferences held for the conclusion of the Treaty of December 25, 1880. In this connection the protocol states:

“The Minister of Colombia said that before beginning the conferences and in view of the events that led up to them he desired to state to the Government of Costa Rica, so worthily represented in the person of its honorable plenipotentiary, how much Colombia had appreciated, as a token of friendship and good will, the order issued on September 9, as a result of what occurred IN THE TERRITORY OF THE PUNTA DE BURICA, which had inspired a fear that the fraternal relations were interrupted that ought to subsist between the two peoples. He added that his Government, desirous of giving a proof of the same good will, which it deeply felt, had not hesitated to send a Legation, with a view to bringing the contest to an end, AVOIDING IN THE FUTURE ANY REASON WHATEVER FOR DISAGREEMENT.

The Minister of Costa Rica said:

“My government has appreciated the sending of Your Excellency as a proof of the cordial friendship that unites the two nations; and in what they both may do, in order to come to an understanding for the purpose of putting an end to troublesome questions, as an example worthy of imitation; since in the

contest, if such a peaceable and rational discussion may be so called, there is no room for any other weapons than those of right and justice.

"The Minister of Colombia desired to note that such weapons were the only ones that his government wished to employ in the debate, while even its *strict right* might be modified, as regards territory, by sentiments of fraternal good feeling."

Between the two countries and their respective governments, therefore, there existed the most friendly relations at the time the arbitration treaty was signed—a situation quite incompatible with an unauthorized occupation by Costa Rica of such an extensive and valuable territory as that of the Canton of Talamanca. Costa Rica was then and for many years had been in possession; and that possession she has continued to enjoy down to this very day, with Colombia's full knowledge and tacit sanction, and the latter has never made the slightest manifestation to the contrary.

(5) CELEBRATION OF THE AGREEMENT OF 1880. ONLY ONE QUESTION AT ISSUE—THAT RELATING TO BOUNDARIES.

With such antecedents no difficulty was experienced in concluding an arbitration treaty looking to a final settlement of the boundary question: the treaty was signed at San José on December 25, 1880 (Doc. No. 364), by Don José María Castro, Secretary of Foreign Relations of Costa Rica and Don José María Quijano Otero, Chargé d'Affaires of Colombia, who were thereunto duly authorized.

In the preamble to that treaty the statement is made that the contracting republics being—

"* * * equally inspired by the sincere desire to maintain and consolidate their friendly relations, and

believing that in order to obtain this benefit, so important for their prosperity and good name, it is necessary to close up the *only source* of the differences which arise between them, WHICH IS NONE OTHER THAN THE QUESTION OF BOUNDARIES, foreseen in Articles 7 and 8 of the Convention of March 15, 1825, between Central America and Colombia, which *has recently been the subject of various treaties between Costa Rica and Colombia*, none of which were ratified; and both nations understanding that this antecedent fact shows the need for the adoption at once of some more *expeditious* means for the designation in perpetuity of a *division line, clear and incontrovertible*, for the whole extent along which their respective territories are contiguous; therefore * * * have agreed, etc."

The question which was the subject of the Treaty of 1880 has been very concisely presented; this was *none other than the boundary question* foreseen in Articles 7 and 8 of the Convention of 1825, and the same that was subsequently the object of various treaties, none of which, however, were ever ratified; so that by referring to the texts of the Convention of 1825 and the treaties concluded later, but not ratified between Costa Rica and Colombia, this question—the only one involved in the Convention of 1880—will be understood in all its details.

As to the Treaty of 1825 (Doc. No. 257), there is no need of consulting any but the two articles specifically cited in the 1880 Treaty.

Article 7 provides in substance that both nations obligate themselves formally to respect the limits of each other as they now exist, and reserve to themselves the amicable demarcation by special convention of a divisional line between the two states, at such time as is indicated in the text. Two things are embraced in this stipulation of

Article 7; one, something *actual* and *present* and designed to take immediate effect, to wit, *mutual respect for the existing limits, as they were found to be at the moment when the treaty was signed*; the other, something *in the future* and to a certain extent *contingent*, to take effect as circumstances might permit or when the parties, at the instance of either, should take up the negotiation therefor. The two, while closely connected, are still independent as between themselves, since the obligation imposed by the first, and which begins to take effect as soon as the treaty goes into force—that of respect for the existing limits, “as they now exist”—cannot be subordinated to the fact as to whether or not the special convention for the demarcation of the divisional line between the two states may be undertaken or carried out at some time in the more or less remote future. There might be a delay of a century in securing a special boundary convention; but in the meantime, and during that interval, there was a full and effective guaranty of respect for and the subsistence of the limits of the two republics, AS THEY EXISTED ON THE 15TH OF MARCH, 1825.

Therefore, in 1880, when it was impossible for the parties to get together in a special convention such as was contemplated, they agreed to settle the question by means *differing from those agreed upon in 1825*; and they took good care to state, in clear, positive and even emphatic language, that the *only source of the differences that arose between them, and which they desired to close up, was none other than the question of boundaries, which, foreseen in the articles contained in the Convention of 1825, had been made subsequently the subject of various treaties that failed of ratification*. Both nations, having been persuaded by these antecedents that some other *more expeditious*

means were needed, whereby the controversy might be promptly and surely settled, they submitted this question to arbitration; that is to say, instead of trying to conclude the "special convention" for fixing the divisional line between the two States provided for by Article 7, they undertook by means of arbitration to secure that result, which was none other than THE DEMARCATION OF THE DIVISIONAL LINE INDICATED. But this agreement, undertaken for the specific purpose mentioned, in no way destroyed the fundamental basis which, as has been said, was established in that Article 7, independently of the stipulation concerning the laying out of the frontier. That basis consisted of the *formal and solemn obligation* contracted by the parties TO RESPECT THE LIMITS AS THEY EXISTED IN 1825, with the reservation concerning their alteration by mutual agreement.

Article 8 authorized the contracting parties to appoint commissioners to go over the points and places along the frontiers and prepare such charts thereof as they might deem convenient and necessary IN ORDER TO ESTABLISH THE DIVISIONAL LINE, and this without molestation by the local authorities; indeed these authorities were to afford them every protection and assistance for the execution of their duty. This article confirmed very explicitly the compact for the respect to be accorded the limits then existing between the two states, since the survey and drawing of maps must take place *on the frontiers with the protection and assistance of the local authorities established along them*, who were directed not to molest the commissioners in any way. The existence, then, of *frontiers* and of *authorities* along those frontiers, was at that time a *real fact, acknowledged and sanctioned by the Convention* of 1825; whereas the survey and the drawing

of maps was a *future and contingent act* for which due provision was made.

From the foregoing it appears that the question provided and arranged for by Articles 7 and 8 of the Convention of 1825 was properly and correctly a *question of boundaries contemplating the location of a divisional line between the territories of the contracting states, and nothing more*. Each of them was in the possession of its respective territory as a whole and as heirs of the sovereignty of Spain; and the corresponding authorities were exercising their jurisdiction. Those territories were mutually recognized as the property of the respective contracting parties; they had stipulated for the reciprocal respect of their corresponding boundaries; and they *undertook only to run the definitive line of demarcation on the ground*. It is evident, therefore, that any territorial question that did not consist merely in the *marking out of the recognized and contiguous territories of the contracting parties* WAS NOT AN OBJECT OF THE CONVENTION OF 1825; and this because such question had been either definitively withdrawn from the discussion, or left to be treated separately. The Treaty of 1825 *embraced only a boundary question*; that is, a question of marking out lines and erecting monuments; it was in no way a *question of sovereignty* or one of territorial recovery put forward by a party who, under a claim of title to possess and enjoy, sought to deprive another of his possession and enjoyment. Actual possession and not a claim of title to territory in the possession of the other government was the test adopted by that treaty for determining the location of the boundary.

Inasmuch as by the Convention of 1880 a perfect equation was established between the question foreseen in Articles 7 and 8 of the Convention of 1825 and the

question that the Convention of 1880 submitted to arbitration, it follows that the latter is a *single question, not a complex one*; and that single question is reduced to the settlement by arbitration of the controversy which, by means of a special convention, was to trace the *divisional line of the territories* of the two contracting parties on the firm and immovable basis of *mutual respect for the limits existing in 1825, except as changed by mutual agreement*.

A convincing proof that the question submitted to arbitration by the Convention of 1880 was, as has been stated, a *single and simple* act involving *solely* the *delimitation or marking out* of the boundaries of the adjoining territories in the possession of the two states, is to be found in that Convention of 1880 itself. According to it there is a clear and perfect identity—a mathematic equation—between the question at issue between them and the controversy solved by the treaties the contracting parties had concluded subsequently to 1825, although those treaties did not reach the stage of ratification. These were three in number: the Calvo-Herrán Treaty of 1856 (Doc. No. 307), the Castro-Valenzuela Treaty of 1865 (Doc. No. 323), and the Montúfar-Correoso Treaty of 1873 (Doc. No. 334). What was the thing agreed to in all of those compacts? The agreement was to *trace the divisional line between the territories of Costa Rica and Colombia*, starting from a given point on one of the oceans, crossing over the Main Cordillera and ending at another given point on the other ocean.

In the first of those agreements, the frontier began at the mouth of the *Doraces (Changuinola)* River; it then followed the course of this river upward to its source; thence it proceeded to the Main Cordillera and after intersecting, but not following it, sought out the Cordillera

of *Las Cruces*, along which range it descended to *Punta de Burica*.

In the second agreement the frontier started from *Punta de Burica*, reached the Main Cordillera and ran along that range until the source of the *Cañaveral* River was reached; it then followed the course of that river to its mouth, which lay to the east of the *Chiriquí Lagoon*.

By the third agreement a start was also made at *Punta de Burica*, the Main Cordillera was crossed and a descent made to the *Bay of Almirante* along the *Bananos* River.

None of these treaties did more than to *mark out the territories in possession of the two contracting republics from sea to sea*, crossing the Cordillera that separate the waters of the two oceans. Therefore, the *question at issue* was none other than the *laying out the boundary and setting landmarks*, which the three Conventions of 1856, 1865 and 1873 did not succeed in settling. If any territorial question of a different nature did exist in 1880, such question remained latent, or its presentation and consideration was deferred to a later period; and in support of this view, the fact is well worth noting that in the proclamation of Dr. Núñez, the President of Colombia (Doc. No. 361), which was one of the causes leading up to the Treaty of 1880, he omitted, as already stated, to publish the Second Conclusion of the Senate of Colombia, relating to the Mosquito Coast. That Conclusion had *special reference to such other questions, extraneous to that of boundaries properly speaking*, which latter was the *only one submitted to arbitral decision*. That Conclusion, separate and distinct from the boundary controversy, not only was directed against Costa Rica, but against two other Central American states—Nicaragua and Honduras; and as President Núñez had taken a stand that might at any moment be converted into one of actual

warfare, it is to be presumed he thought it more prudent and discreet to *confine* his action and his demands to the main question pending between Costa Rica and Colombia alone, leaving any others for a more opportune moment, for in this way Costa Rica would be isolated; whereas the agitation of the other questions would lead to the union of the three republics and perhaps bring in two more of the neighboring states through sympathy and for common defence.

In corroboration of the view that the *only question placed in issue* by the Treaty of 1880 was that of the demarcation of the frontier between the contiguous territories of the two republics, it may be said that when Señor Peralta, Minister of Costa Rica, requested the President of France to serve as Arbitrator, he traced between the two states the divisional line which corresponded to Costa Rica's understanding of what that line should be, in view of the titles invoked in her behalf; he also traced another divisional line to represent the one which, according to Colombia's allegations, that government had maintained during the controversy. Both of these lines were marked out on the map which Señor Peralta submitted with the note he addressed on June 9, 1897 (Doc. No. 404), to the Minister of Foreign Affairs of the French Government (Map A). These lines started on the Pacific Ocean—that of Costa Rica from the mouth of the Chiriquí Viejo River, and that of Colombia from the mouth of the Golfito River, and they both ended upon the Atlantic Ocean—that of Costa Rica at the mouth of the Chiriquí or Calobébora River and the Escudo de Veragua, and that of Colombia at the mouth of the Sixaola. It will thus be seen that the question narrowed itself down exclusively to the marking out of the contiguous territory of the two adjoining republics.

The territory contested was embraced within a perimeter, the extreme points of which were indicated on either ocean; and in the frontier demarcations indicated by Señor Peralta all territory was excluded which was located to the north of the Sixaola and to the west of the Yorquín River.

Other articles of the Treaty of 1825 may have referred to territorial questions other than the special question of boundaries set out in Articles 7 and 8, or they may have contained the germ of such questions, but, inasmuch as the Treaty of 1880 limited its reference and confined itself to the single question mentioned in those Articles 7 and 8, and entirely omitted all the other provisions of the Treaty of 1825, it is quite useless, for the purpose of fixing the question at issue, to consider anything that is not specifically provided for in the only two articles of this Treaty that are cited in the Arbitration Convention of 1880.

In conformity with the basis stated, the Treaty of 1880, in Article 1 thereof, stipulates:

“The Republic of Costa Rica and the United States of Colombia agree upon the arbitration of the question of boundaries existing between them, and the designation of a line which shall divide for all time and with entire clearness the territory of the former from the territory of the latter, each one remaining in the full, quiet and peaceful dominion, so far as respects the same between themselves, of all the land which is left on its side of the aforesaid line, upon which there is not to remain any charge or special servitude in favor of the other.”

In Article 5 the parties indicated as their choice for Arbitrator either the King of the Belgians, the King of Spain or the President of the Argentine Republic, in the order given, in all of whom they had, without any distinction whatever, the most unlimited confidence.

Under that agreement the arbitration was confided to H. M., the King of Spain, at that time Don Alfonso XII.

II. ADDITIONAL CONVENTION OF 1886.

(1) CONFIRMATION OF THE SPANISH ARBITRATION.

Don Alfonso XII having died, the Ministers Plenipotentiary of Costa Rica and Colombia, Don León Fernández and Don Carlos Holguín, made a second agreement, which they signed in Paris on January 20, 1886 (Doc. No. 369), under the designation of an "Additional Convention" to the one subscribed in 1880, for the settlement of the boundary question. Article 1 of that convention stipulated:

"The Republic of Costa Rica and the United States of Colombia recognize and declare that, notwithstanding the death of His Majesty, Don Alfonso XII, the Government of Spain is competent to continue acting in the arbitration proposed by the two republics, and to deliver a definitive award, of an irrevocable and inappealable character, in the pending litigation *concerning territorial boundaries* between the two high contracting parties."

(2) OPPOSING CLAIMS OF THE PARTIES.

That additional convention contained four other articles of which the 2nd and 3rd, setting forth the opposing claims of the parties, require consideration and are as follows:

"ART. 2. The territorial boundary which the Republic of Costa Rica claims, on the Atlantic side, reaches as far as the Island of the Escudo de Veragua and River Chiriquí (Calobébora), inclusive; and on the Pacific side as far as the River Chiriquí Viejo, inclusive, to the east of Punta Burica. The territorial boundary which the United States of Colombia claims, reaches, on the Atlantic side, as far as the

Cape Gracias a Dios, inclusive, and on the Pacific side, as far as the mouth of the River Golfito, in the Gulf of Dulce.

"ART. 3. The arbitral award must be confined to the territory disputed which lies within the extreme boundaries already stated, and it cannot in any way affect the rights which a third party, who has not intervened in the arbitration, may allege to the ownership of the territory included within the boundaries indicated."

The best exposition that could be given here of the reasons for the Convention of 1886, may be found in the Report of the Department of Foreign Relations of Colombia, for the year 1888 (Doc. No. 379), from which the following extracts are copied, pages 28-30:

"The deplorable death of H. M., Don Alfonso XII, King of Spain, the Arbitrator designated by Colombia and Costa Rica to fix the divisional boundary between the two republics, was the occasion for raising doubts as to the extent of the jurisdiction conferred upon the Arbitrator by the Convention signed in San José on December 25, 1880. Although from this compact, considered in conformity with the interpretation of treaties, it may be inferred without violence that the delegation was not personal to Don Alfonso XII, but to whomsoever might be exercising the Government of Spain, nevertheless, in order to assure the validity of the decision and remove every reason for litigation in the future, the interested parties were persuaded of the necessity for an explanation of the original Convention, adding thereto a new one, which was signed in Paris on January 20, 1886, by the plenipotentiaries of Colombia and Costa Rica in Spain.

"Such was the reason for the Convention approved by Law 9 of the same year, and formulated in the terms following:

(Here follows the text of the convention.)

* * * * *

"You know, Honorable Senators and Representatives, that upon the occasion of the Agreement for an arbitration *juris*, to which I have just referred, by which Colombia and Costa Rica entered into a compact for the delimitation of their frontiers, the Government of the United States raised objections to the acceptance of the arbitration by the Government that was to deliver the Award. The objections of the United States did not arise from any idea opposed to the sovereignty of the contracting republics, nor did they argue any pretension of a protectorate exercised by that nation over Colombia or Costa Rica. They were intended purely and simply to prevent the decision, whatever might be its terms, in changing the ownership of any portion of the disputed territory, from being understood as annulling the prior rights which a third party could show over such territory or over any portion of it. As the Treaty of 1846, between New Granada and the United States [Doc. No. 281] conceded to this latter nation certain rights and prerogatives in relation to transit across the Isthmus of Panama, the Government at Washington sought to make them secure by requiring that Colombia, as well as Costa Rica, should declare that such rights would remain intact notwithstanding the decision, which could hardly be more than to change the ownership as regards the contracting parties, but that the territory which might be transferred by them should remain affected by the rights which the United States might have in it.

"Without prejudicing the right alleged by the Government of the American Union, and considering the case merely as an abstract one, it is obvious that the arbitration, under the circumstances which led up to it, could have no other purpose than that of varying the dominion, possession and property right of the territory as regards Colombia and Costa Rica;

but that it could not in any way affect third parties, who were not represented in the suit and who had not delegated any jurisdiction to decide as to their rights.

"It would, therefore, seem to be unnecessary and superfluous to make any declaration in such a case. Nevertheless, as a token of good-will and courtesy toward the Government and the people of the United States, the Governments of Colombia and Costa Rica agreed in formally declaring, through their representatives in Washington, that the arbitration could not have any affect over any rights which the United States might have, by virtue of prior titles, in any portion of the territory, the dominion or ownership of which might be changed by the arbitration. The declaration in this form did not recognize the existence of such rights, but merely excepted them in case they were proved to exist."

As may be seen from this statement made to the Congress of Colombia in 1888, by the Minister of Foreign Relations, Don Vicente Restrepo, it was not the purpose of that Convention of 1886 to enlarge, or to restrict, the character of the question at issue in the year 1880, or to change it in the slightest degree, but simply to smooth the way for arbitration by removing the difficulty that had arisen with regard to the jurisdiction of the arbitrator and the objection that had been offered by the Government of the United States.

The Spanish Government accepted the arbitration conditionally; that is to say, it declared that its work could not be begun until after the termination of the arbitration that was pending between Colombia and Venezuela, as appears by the notes written by the Ministers of State, Don Segismundo Moret and the Marquis de la Vega de Armijo, in 1887 and 1888, respectively (Docs. Nos. 373, 377).

CHAPTER VII.

AGREEMENT FOR INTERNATIONAL ARBITRATION.

CONVENTION OF 1896.

- (1) ARBITRAL CONVENTION OF 1896, IN PART REVALIDATING AND MODIFYING THOSE OF 1880 AND 1886.
- (2) ARBITRATION BEFORE THE PRESIDENT OF THE FRENCH REPUBLIC. ALLEGATIONS OF COSTA RICA; GEOGRAPHICAL MAP OF THE DISPUTED TERRITORY PRESENTED BY SEÑOR PERALTA.
- (3) EXAMINING COMMISSION PRESIDED OVER BY AMBASSADOR ROUSTAN.
- (4) DOCUMENTS SUBMITTED BY COSTA RICA.
- (5) DOCUMENTS PRESENTED BY COLOMBIA.
- (6) FAILURE TO COMMUNICATE TO COSTA RICA MANY DOCUMENTS OF THE ADVERSE PARTY. COMPLAINTS BY SEÑOR PERALTA REGARDING THIS OMISSION.
- (7) FRONTIER ASKED FOR BY COSTA RICA.
- (8) FRONTIER ASKED FOR BY COLOMBIA. THE SILVELA LINE.
- (9) AWARD RENDERED BY PRESIDENT LOUBET.
- (10) GRAMMATICAL ANALYSIS OF THE LOUBET AWARD.
- (11) NOTES BY SEÑOR PERALTA.
- (12) RESPONSE GIVEN BY THE MINISTER OF FOREIGN AFFAIRS, M. DELCASSÉ, AND AN ANALYSIS THEREOF.

(1) **ARBITRAL CONVENTION OF 1896, IN PART REVALIDATING AND MODIFYING THOSE OF 1880 AND 1886.**

The Republics of Colombia and Costa Rica entered into a third arbitral convention, signed at Bogotá on the 4th of November, 1896 (Doc. No. 403), Article 1 of which confirms the two preceding conventions, with, however, the modifications specified below.

In Article 2 the high contracting parties name the President of the French Republic as Arbitrator, making the explanation that the Government of Spain, which had previously accepted the charge, has not been designated, because of Colombia's disinclination to exact from that government such continued sacrifices, for, only a short time before it had subscribed with Ecuador and Peru to a boundary treaty in which His Catholic Majesty was named as Arbitrator, which followed close upon the laborious Colombia-Venezuelan boundary arbitration.

Articles 3 and 4 contain rules of procedure, and Article 5 annuls Articles 2 to 6, inclusive, of the Convention of 1880 and the first and fourth of that of 1886. It follows, therefore, that the first Article of the first-mentioned convention and the second and third Articles of the additional convention, which were quoted in speaking of those conventions, remain in force.

(2) **ARBITRATION BEFORE THE PRESIDENT OF THE FRENCH REPUBLIC. ALLEGATIONS OF COSTA RICA; GEOGRAPHICAL MAP OF THE DISPUTED TERRITORY PRESENTED BY SEÑOR PERALTA.**

On the 9th of June, 1897 (Doc. No. 404), the Costa Rican Minister at Paris addressed to the French Minister of Foreign Affairs a communication in which he brought

to the latter's attention the treaty signed at Bogotá on the 4th of November, 1896, and besought His Excellency the President of the French Republic, to accept the office of Arbitrator of the question of boundaries between Costa Rica and Colombia, to which office he was called in that treaty. This was accompanied by a copy of the treaty, in Spanish, with a translation thereof into French; also an extract of all the articles then in force of the various arbitral conventions concluded by the two republics. The Minister of Costa Rica likewise transmitted with the communication mentioned a *geographical chart of the territory in litigation on which was traced the boundaries claimed by each of the high contracting parties* (Map A).

On the geographical chart referred to there is traced, in yellow ink, the line of Costa Rica's extreme claim, and, in red ink, the line of Colombia's extreme claim. At the present moment the description of the first of those lines is not of special interest, but the description of the second is of immediate interest. This line is traced in conformity with all the antecedents of the question, as follows: Its point of departure lies at the disemboguement of the Golfito River in the Gulf of Dulce on the Pacific Ocean; it follows the course of that river to its source; it then runs up the Main Cordillera that divides the waters of the two oceans and crosses approximately at the ninth degree of north latitude; thence it descends, in an approximately south-north direction, toward the source of the Yorquín River (which some call the Doraces or Culebras), and follows the course of this river to its confluence with the Sixaola, along the bed of which river the line continues to its disemboguement in the Atlantic Ocean. The said line limits the territory *in dispute between the two republics* to that which lies to the eastern or right-hand side

of it. The territory *indisputedly pertaining to Costa Rica* is situated to the west of that line, or on its left. *The River Coto de Térraba* was wholly comprised within *undisputed* Costa Rican territory, as also were *Pico Blanco* and other heights of the Main Cordillera, which is known also by the name of *Cordillera de Talamanca*. Included also in Costa Rican territory free from dispute, from their sources to their mouths, were the rivers *Urén*, *Lari* and *Coén*, affluents to the *Telire* or *Tarire* River on its right bank; also the settlement of *Sipurio*, the capital of Talamanca, its dependency San José de Cabécar, and other inhabited points of the interior valley of Talamanca. By a glance at the map transmitted by the Minister of Costa Rica to the Arbitrator, on the 9th of June, 1897 (Doc. No. 404), the accuracy of these statements will be demonstrated (Map A). The said line, which for convenience will be called the *Golfo-Yorquin-Sixaola-Line*, enclosed on the west the territory involved in the controversy between the two republics relating to the disputed frontier of the contiguous colonies of Costa Rica and Veragua.

(3) EXAMINING COMMISSION PRESIDED OVER BY AMBASSADOR ROUSTAN.

After the acceptance of the office of Arbitrator by His Excellency the President of the French Republic on the 16th of June, 1897 (Doc. No. 405), the Minister of Foreign Affairs, M. Hanotaux, in a note dated the 19th of the following October (Doc. No. 406), informed the parties of the creation of a special commission charged with the duty of examining the documents presented by the contending governments in support of their claims for recovery. Composing this commission were His

Excellency, Monsieur Roustan, late Ambassador of France, as president, and Messieurs Delavaud, Secretary of Embassy and Chief of the American Section in the Division of Consulates, Fouques Duparc, Secretary of Embassy attached to the Division of Political Affairs, and Gabriel Marcel, Custodian of Maps in the National Library. All of these commissioners assembled, on the 2d of that month, at the Department of Foreign Affairs to agree upon the order of their proceedings. In the same note Monsieur Hanotaux requested that the documents mentioned be sent as soon as convenient to the president of the said commission.

The commission was created in conformity with the fourth paragraph of Article 4 of the Treaty of Bogotá, which authorized the Arbitrator to delegate his functions provided he participated directly in the Award.

On the 16th of December, 1898, the term expired within which the briefs of the parties were to be presented, and prior to that date both complied with the requirement. On the 16th of the following March, the briefs of each were delivered by the Arbitrator to the respective opposing representatives; and on September 16, 1899, both fulfilled the duty of presenting their respective rebuttals.

(4) DOCUMENTS SUBMITTED BY COSTA RICA.

Long before the presentation of the first brief, the Representative of Costa Rica was required by the President of the Examining Commission to submit thereto all the documents on which Costa Rica relied in connection with the question of boundaries; and in obedience to this requirement, Señor Peralta delivered to Ambassador Roustan, on the dates indicated, the following documents:

MAY 17, 1898.

Peralta (M.M. de) . . . Costa Rica, Nicaragua y Panamá en el Siglo XVI; Madrid, 1882.

Ibid Costa Rica y Colombia de 1573 á 1881; Madrid, 1886.*Ibid* Límites de Costa Rica y Colombia; nuevos documentos, etc.; Madrid, 1890.*Ibid* Atlas Histórico-Geográfico de Costa Rica, Veragua y Costa de Mosquitos; Madrid, 1890.*Ibid* Two maps of Costa Rica.

Fernández (León) . . . Documentos especiales sobre límites, Vols. IV and V; Paris, 1886.

MAY 18, 1898.

Peralta Historia de la jurisdicción territorial de Costa Rica; Madrid, 1891.

Later on Señor Peralta delivered to the Chairman of the Commission the following documents and at the same time delivered copies thereof to the Representative of Columbia:¹

DECEMBER 5, 1898.

Peralta Exposé des Droits territoriaux de la République de Costa-Rica soumis à S. E. le Président de la République française; Paris, 1898.

Ibid Costa Rica y Costa de Mosquitos; Paris, 1898.

SEPTEMBER 16, 1899.

Peralta Réplique à l'Exposé de la République de Colombie, Paris, 1899.

Ibid Juridiction territoriale de la République de Costa-Rica. Titres et documents justificatifs; Paris, 1899.

JULY 24, 1900.

Peralta La Géographie historique et les Droits territoriaux de la République de Costa-Rica. Aperçu critique avec documents à l'appui, etc., Paris, 1900.

¹Doc. No. 409.

(5) DOCUMENTS PRESENTED BY COLOMBIA.

At the same time that the Minister of Costa Rica delivered to the Commission the books specified—which books comprised all the briefs of Costa Rica, and all of the documentation adduced in their support—he earnestly besought the President of the Commission to furnish him with such documents and briefs as were being presented on behalf of Colombia.

The Minister of Foreign Affairs thereupon delivered direct to Señor Peralta, on the dates indicated, the following:

MARCH 16, 1899.

Colombia's brief, signed by Señor Silvela.

SEPTEMBER 16, 1899.

Colombia's reply to the brief of Costa Rica; that is, the memorandum signed by Monsieur Poincaré on the 8th of September, 1899.

Outside of those two documents, *Señor Peralta has never received*, either officially or privately, from the Minister of Foreign Affairs, or the Examining Commission, or from the Representative of Colombia, *a single paper* in exchange for those he had presented in obedience to the requirement of the Commission as above stated.

(6) FAILURE TO COMMUNICATE TO COSTA RICA MANY DOCUMENTS OF THE ADVERSE PARTY. COMPLAINTS BY SEÑOR PERALTA REGARDING THIS OMISSION.

There were, however, on file in the tribunal—presented by Colombia—as *appears from the text of the Award* (Doc. Nos. 413, 414), the following memoranda, opinions, and other documents in support of her case, in addition to the

brief and reply which had been transmitted in due course to the Representative of Costa Rica:

(a) *A third memorandum by Colombia signed by Monsieur Poincaré on the 19th of April, 1900.*

(b) *An opinion by Señor Don Antonio Maura, signed at Madrid on the 25th of March, 1900.*

(c) *An opinion by Dr. Don Simón de la Rosa y López and his collaborators, signed on the 23d of January, 1900.*

(d) *A chronological résumé of the territorial titles of Colombia (Résumé chronologique des Titres territoriaux de la République de Colombie), published at Paris in 1899.*

(e) *Numerous geographical charts, with their texts, both in the original and in translation, and annotated—transmitted to the Arbitrator by the Representative of Colombia.*

It would appear that there were also filed in the tribunal, without notice to Costa Rica—although not cited in the Award—the following opinions:

(f) *An opinion by the Illustrious College of Lawyers of Seville, signed by the Señores Federico de Castro, Antonio Mejías and Francisco Pagés, authorized by its Dean, Nicolás Gómez de Orozco, and bearing date the 13th of April, 1900.*

(g) *A fourth memorandum by Monsieur Poincaré, entitled "Résumé des Conclusions de la Colombie," dated the 20th of July, 1900.*

(h) *A memorandum by Dr. Don Francisco de Paula Borda on the question of boundaries between Costa Rica and Colombia.*

The first two memoranda (f and g) are to be found in the same printed volume which contains the *memorandum* by Dr. Rosa y López, cited in the Award; the last (h), it is reasonable to suppose, is the study of the case prepared expressly by order of the Colombian Government, as

appears from the footnote on page 483 of the notable study which under the title above mentioned was printed at Bogotá in the year 1896.

This same memorandum by Señor Borda is alluded to by Don Jorge Holguín, Minister of Foreign Relations for Colombia, in his report presented to the Congress in June, 1896, in the following terms:

"In speaking of those labors mention should be made of the book which, *by order of our government*, was written by Señor Don Francisco de P. Borda, and of which, from the few chapters I have read, I have formed the highest opinion. It appears to me that we have in this book a new and abundant source of historical data of great value, and it is to be noted that his simple and elegant style is admirably maintained throughout the work. To give a sample of this, I have thought it well to publish the following chapter, which forms a part of the preliminary statement * * *."

The Minister of Foreign Relations, Don Antonio Gómez Restrepo, likewise refers to the same memorandum in his report to the Colombian Congress, as appears from the passage here quoted.

"* * * On its part the government, desirous of adopting all means available to substantiate our right, *entrusted several years ago*, to the Señor Dr. Don Francisco de Paula Borda who is so distinguished as a specialist in this class of studies, the preparation of a memorandum that should contain the fruits of his years of investigation. This Memorandum, which has achieved the proportions of an extensive work, *is now in print*, and, from the abundance of historical documents it contains, illuminated by important observations, *it will be a source of information to be consulted by all who have to participate in the examination and decision of this delicate matter.*"

This was written by Señor Gómez Restrepo in July of 1898 (Doc. No. 408).

When were all these memoranda, opinions, maps and other documents in support of the case filed? It is absolutely impossible to determine, for the reason that the Representative of Costa Rica received no notice thereof— notwithstanding they were presented to the tribunal in printed form—until he found some of them cited in the Award.

Neglect on the part of Costa Rica's Representative cannot be assigned as the cause of this ignorance when the following facts are taken into consideration:

(a) He constantly and repeatedly requested, both verbally and in writing, to be furnished with the briefs and documentation of his opponent.

(b) He addressed a communication to the Government of Costa Rica, under date of December 16, 1898 (Doc. No. 618), in which he alluded to the delivery of various manuscripts and maps made to Monsieur Roustan, in his private residence, by the Colombia Representative, which delivery was unaccompanied by any note or inventory whatsoever. Note the following words in that communication: “* * * The former [M. Roustan] added that Señor Betancourt had confined himself to leaving at his private residence a large quantity of manuscripts and maps, unaccompanied by a note of transmittal or even by an inventory—a circumstance that caused him much confusion.”

(c) In communication of December 30, 1898 (Doc. No. 619), to his government, he informed it of the presentation to the Arbitrator of various documents on the part of Colombia relating to the question of boundaries; among them was A MEMORANDUM BY SEÑOR BORDA.

Referring to this, Señor Peralta said:

"Although this Memorandum is in print and bears in its title the words, 'Colombia's Defense Against the Claims of Costa Rica,' neither here (Paris) nor in Madrid have I been able to secure a single copy; and it may be supposed that Señor Betancourt has a keen interest in not placing it at my disposal, judging from the objections he has interposed with the purpose of preventing the Arbitrator from communicating these documents to this Legation before the expiration of the three months within which such transmission must be made according to the stipulations in the Convention of Bogotá."

(d) Having failed to secure the communication of documents so frequently alluded to, the Representative of Costa Rica, on the 18th of September, 1899 (Doc. No. 409), addressed a note to His Excellency, Minister Delcassé of which the following is an exact copy:

"Monsieur le Ministre, J'ai eu l'honneur de recevoir la lettre de Votre Excellence en date du 16 Septembre courant par laquelle Elle veut bien m'informer qu'Elle a remis à Monsieur Betancourt, Ministre de Colombia, la Réplique de la République de Costa-Rica à l'Exposé de la Colombie et je m'empresse d'accuser réception à Votre Excellence de l'exemplaire du Mémoire présenté par M. Betancourt à l'appui des prétentions de son Gouvernement, qu'Elle a bien voulu me faire parvenir en échange.

"Je serais très obligé à Votre Excellence de communiquer au Ministre de Colombie le volume de documents joint à la Réplique, COMME CELA S'EST FAIT POUR TOUTES LES PIÈCES, SANS EXCEPTION, QUI ONT ÉTÉ PRÉSENTÉES PAR COSTA-RICA À L'ARBITRE.

"Par cette même occasion je crois devoir informer Votre Excellence que dès le 16 Décembre dernier, Costa-Rica a fait parvenir au Représentant de la

partie adverse, duement imprimés, TOUS LES DOCUMENTS ET LES CARTES GÉOGRAPHIQUES SUR LESQUELS ELLE APPUIE SES REVENDICATIONS OU QUI PEUVENT CONTRIBUER À L'ÉCLAIRCISSEMENT DE LA QUESTION.

"PAR CONTRE ELLE N'A REÇU DE LA COLOMBIE QUE L'EXPOSÉ SIGNÉ PAR M. SILVELA ET N'A PU OBTENIR JUSQU'ICI RIEN DE PLUS, *pas même un inventaire des pièces manuscrites soumises à l'Arbitre par la Colombie.*

"Votre Excellence, dans sa haute impartialité, peut se rendre compte facilement de la SITUATION INÉGALE DANS LAQUELLE COSTA-RICA EST PLACÉE DANS CES CONDITIONS et je Lui serai bien obligé d'interposer ses bons offices pour obtenir de Monsieur Betancourt qu'il ME SOIT REMIS AU MOINS UN EXEMPLAIRE DE TOUS LES DOCUMENTS PRÉSENTÉS À L'ARBITRE PAR LA COLOMBIE, ou pour qu'il soit procédé à un échange réciproque d'un certain nombre d'exemplaires de ces documents."

The foregoing note, in its turn also, failed to produce any favorable result.

(e) The Representative of Costa Rica, in view of the above circumstances, made a further effort, addressing to Ambassador Roustan, on the 24th of July, 1900 (Doc. No. 410), a despatch in which he says:

"Je saisis également cette occasion pour faire observer à Votre Excellence que jusqu'à cette date, la République de Costa-Rica N'A REÇU AUCUNE COMMUNICATION OFFICIELLE OU AUTRE, DU VOLUME IMPRIMÉ DE DOCUMENTS TRADUITS ET COMMENTÉS PAR COLOMBIA, NI DE L'INVENTAIRE DE CES DOCUMENTS, PAS PLUS QUE DES EXPERTISES DE DOCUMENTS ORDONNÉES PAR LA RÉPUBLIQUE DE COLOMBIE et conséquemment intéressées."

That note was answered by Monsieur Roustan on August 2, 1900 (Doc. No. 411), stating that, at its session of July 31, ultimo, the Commission had unanimously

agreed that the documents presented by the interested parties AMPLY SUFFICED TO MAKE CLEAR THEIR CONTENTIONS, and that, consequently, the Commission was of opinion that NO FURTHER BRIEFS OR VERBAL ARGUMENTS WERE NECESSARY. Concerning the transmission of documents presented by Colombia, and so anxiously besought by Costa Rica for examination, THE NOTE OF MONSIEUR ROUSTAN IS ABSOLUTELY SILENT.

For this reason, in a despatch of September 14, 1900 (Doc. No. 415), Señor Peralta reported to his government:

“* * * I ought to add that, contrary to the spirit of Article 4 of the Treaty of Bogotá the Arbitration Commission received a third Memorandum from Monsieur Poincaré and two others, CAREFULLY HIDING THEIR EXISTENCE FROM THIS LEGATION, NOTWITHSTANDING MY REITERATED DEMANDS. The Treaty of Bogotá did not provide for any more memoranda than those that should be presented six months after the delivery of the first allegations, and equity demands that, in case of the presentation of any Memorandum later, it should be turned over or reasonable information of it given to the other side. NOTHING OF THIS KIND HAS BEEN DONE, nor, notwithstanding my constant offers for that purpose, have I been called upon by the Commission to give explanations of our case.”

In that despatch Señor Peralta complains of the failure to communicate three arguments, one by Monsieur Poincaré and two anonymous. He did not then know that the memoranda presented and secretly guarded from Costa Rica were much more numerous; he did not know that accompanying them were numerous geographical charts and maps with annotated texts—originals as well as translations—and, finally, he was ignorant of the fact that a great many documents were filed in the arbitral

tribunal to the prejudice of the case of Costa Rica, as to which it is not known, even to this hour, in what language they were written, or whether they were in manuscript or print.

It is significant in this connection to note the statement made by the neo-Granadian Minister of Foreign Relations in his report to the Congress in the year 1855 (Doc. No. 305):

“Up to the present time,” he said, “it has been impossible [in the boundary dispute with Costa Rica] to do any more than assemble the data and documents necessary to sustain the rights of New Granada in this weighty question, endeavoring at the same time to secure the requisite documents for a proper discussion of that question from the point of view of the advantage to both countries; and to-day I flatter myself that I hold in my office the best documents of various import authorized or presented by distinguished citizens who are possessed of valuable knowledge and important information in regard to the matter, and that, animated by patriotic zeal they have promptly responded to the invitation sent out by this Department to come to its aid with any light they might be able to throw upon this delicate subject.”

Forty-five years of persistent reserve before litigation; and afterwards, a secrecy even more guarded and impenetrable!

Further commentary upon the facts above set forth would be idle; they have been brought into the case solely with the object of making entirely clear *the unequal position* forced upon Costa Rica in the controversy, or rather, her defenselessness.

(7) FRONTIER ASKED FOR BY COSTA RICA.

Señor Peralta, in his demand, entitled "Exposé des Droits territoriaux de la République de Costa-Rica," asked for the following frontier:¹

"A line which, starting from the island of the *Escudo de Veragua*, runs in a southerly direction to the mouth of the *Chiriquí*, *Calobébora*, or *Culebra* River, and thence follows into the upper waters of that river to its source in *Santiago* hill, and from that hill, along the summit of the Cordillera that separates the waters of the Atlantic and Pacific oceans, passes by the hill of the *Hornito* the peak known as *La Playita* and the hill of the *Horqueta* to the eastern and principal headwaters of the *Chiriquí Viejo* River, in the immediate vicinity of the *Chiriquí* volcano, and which from that point continues along the bed of that river, down stream, as far as its mouth in the Pacific Ocean near the mouth of the *Piedra* River, to the east of the *Burica Peninsula* and *Burica Point*."

In his reply to Colombia's brief, under the title "*Jurisdiction territoriale de Costa-Rica*," Señor Peralta repeats and confirms his demand for this same line.²

He based his request for this line (which bears his name) on the fact that it is the one that always separated the Spanish Province of Costa Rica from the Veragua provinces ever since the Royal cédula of 1573 and the Compilation of the Indies down to the moment of the independence of both provinces; and the fact that it was the same that constituted, in fact and law, the *uti possidetis* of 1810 and 1821, and was the one referred to by the Treaty of Bogotá

¹Manuel M. de Peralta, *Exposé des Droits territoriaux de la République de Costa-Rica*, pp. 199, 200.

²Peralta, *Jurisdiction territoriale de Costa-Rica. Réplique à l'Exposé de la République de Colombia*, pp. 57, 58.

of 1825, at the establishment of the frontier between the two states when they mutually recognized each other.

The line of demarcation demanded by Costa Rica was found to be exactly in accord with all the precedents in the diplomatic controversy between the two countries and in harmony with the stipulations of the Convention of 1886, and with the bases established in the geographical chart accompanying the communication of June 9, 1897, to which reference is hereinbefore made.

(8) FRONTIER ASKED FOR BY COLOMBIA. THE SILVELA LINE.

Colombia's special diplomatic representative at Paris presented to the Arbitrator in the nature of a claim a memorandum by Don Francisco Silvela (the lawyer for the Legation of that Republic in Spain), which was signed by him at Madrid, December 8, 1898, and in which he asked for the following frontier line, bearing his name.

"Starting from this mouth of the *Golfo* River in *Dulce* Gulf on the Pacific side it continues northward along a meridian which crossing the *Coto* River (whose waters empty into the Pacific) and cutting across the *Lari* and *Coén* rivers (tributaries of the *Teliri* or *Sigsaula*, whose waters empty into the Atlantic) meets this river (*Tiliri* or *Sigsaula*) at a point located at approximately $9^{\circ} 33''$ of north latitude. From the point of the intersection of the said meridian with the *Tiliri* or *Sigsaula* River (a point the geographical coördinates of which are $9^{\circ} 33''$ of north latitude and longitude $85^{\circ} 31' 30''$ west of the Meridian of Paris, approximately) a straight line is traced which terminates at the disembogement of the *Sarapiquí* River in the San Juan or Desaguadero River ($10^{\circ} 43'$ north latitude and longitude $86^{\circ} 15'$ west of the Meridian of Paris)."

The meridian heretofore referred to is exactly equivalent to $83^{\circ} 11' 30''$ west of Greenwich.

A glance at the geographical chart so often cited will suffice to convince one that the line drawn by Señor Silvela constituted a new invasion of Costa Rican territory by Colombia, in violation of the Conventions of 1825 and 1886, and in open contradiction of the most elementary principles of law. By the Treaty of 1886 Colombia was absolutely estopped from claiming a square inch of territory beyond the mouth of the *Golfito* River; yet the very thing that Señor Silvela did was to plunge into the undisputed territory of Costa Rica situated to the west and north of the said river mouth. His line had its beginning several miles (nearly three) to the west of that mouth, at *Punta Golfito* (Golfito Point) which is the western arm of the Cove of Golfito, as will be apparent, without a shadow of doubt, from an examination of the special map of the cove entitled "Gulf of Dulce," and published by the United States Navy Department in 1885 (Map XXXVI). Señor Silvela's error arose from the fact that he took for the mouth of the Golfito River, what is clearly shown on the map to be the Punta Golfito. This place is not the point at the mouth of the said river which touches the Golfito further east and toward the middle of the cove exactly at $83^{\circ} 8' 36''$. His line further violates the limitations imposed by the treaties of 1886 and 1825 by cutting across the course of the Coto River on the Pacific slope, and the courses of the *Lari*, *Coén* and *Telire*, on the Atlantic slope; so that, solely on his own authority, and starting from the initial point (the mouth of the Golfito), he alters the direction of the line bounding the disputed territory from *east to west*, seeking thus to broaden, enormously and arbitrarily—and to the prejudice of Costa Rica—the area in litiga-

tion. Colombia was clearly estopped from claiming territory included by this line because it was not previously in dispute between the two countries.

A line that should terminate, at the farthest—conformably with the most advanced claims of Colombia—on the right bank of the Sixaola River's mouth (Diagram A) is converted by Señor Silvela into a meridian and made to run toward the Tarire River, and away from the Sixaola's mouth, over a stretch of 40 kilometers. This involves enclosing within that arbitrary broadening the capital of the canton of Talamanca (the undisputed property of Costa Rica) and the greater part of the lands in that valley suitable for agriculture.

Not content with such a usurpation, from the point mentioned, where the new invading line cuts across the *Tarire* River, Señor Silvela runs a straight line to the mouth of the *Sarapiquí*—an affluent to the river San Juan de Nicaragua, on the right—in this way broadening, at his pleasure and arbitrarily, the area that is the subject of another territorial question (involving the authority of the Royal order of 1803) which related only to the littoral, and which could in no way be accorded the scope he gave it for the purpose of stripping Costa Rica of her richest and most valuable territory—a territory which never, under any conception, could have been submitted to the hazard of litigation.

The result of the foregoing exposition is that no where throughout its course and not even at its point of departure was the line of Colombia's demand correct.

The arguments advanced to justify the demand for the Silvela line are exclusively confined within the sphere of the ancient Spanish colonial law.

Thus two fundamental laws of that period are invoked: the Royal cédula of 1537 (which was abrogated by that of 1573) and the Royal order of San Lorenzo of 1803 (which was abrogated by that of 1806). In order to apply the first, the Province of Veragua, which was erected upon the ground-work of the duchy of that name, is confounded with *Royal Veragua* within which was erected the *Province of Costa Rica*; and to apply the second, the *Mosquito Coast*, which was solely a part of the coasts of Nicaragua and Honduras, is prolonged to extend over *the entire Atlantic littoral of Costa Rica*, from the San Juan River to the confines of Veragua, this last being a section of coast-line that *never constituted a part of the Mosquito Coast*.

But the Silvela line, wholly arbitrary as it is, neither adjusted itself to the bases of the controversy as fixed by the Treaty of 1886, nor responded to either of the fundamental laws above mentioned; for, according to the first, Colombia should have asked for all of Costa Rica's territory, and on the authority of the second, she should have confined her claim to the coast in the true geographical sense of that word without encroaching, in a manner so heedless and so at variance with the clearest principles of law, within the undisputed regions of Costa Rican territory.

(9) AWARD RENDERED BY PRESIDENT LOUBET.

The President of the French Republic, His Excellency Monsieur Loubet, decided the arbitral proceeding by his Award of September 11, 1900, at Rambouillet, as follows:

“La frontière entre les Républiques de Colombie et de Costa-Rica sera formée par le contrefort de la Cordillère qui part du *Cap Mona* sur l'Océan Atlan-

tique et ferme au Nord la vallée du Rio Tarire ou Rio *Sixaola*, puis par la chaîne de partage des eaux entre l'Atlantique et le Pacifique jusqu'à par 9° environ de latitude; elle suivra ensuite la ligne de partage des eaux entre le Chiriquí Viejo et les affluents du Golfo Dulce, pour aboutir à la Pointe Burica sur l'Océan Pacifique.

"En ce qui concerne les îles, groupes d'îles, îlots, bancs, situés dans l'Océan Atlantique, à proximité de la côte à l'Est et au Sud-Est de la Pointe Mona, ces îles, quels que soient leur nombre et leur étendue, feront partie du domaine de la Colombie.

"Celles, qui sont sises à l'Ouest et au Nord-Ouest de la dite Pointe, appartiendront à la République de Costa-Rica.

"Quant aux îles plus éloignées du continent et comprises entre la Côte de Mosquitos et l'isthme de Panama, nommément: Mangle-Chico, Mangle-Grande, Cayos-de-Alburquerque, San-Andrés, Santa-Catalina, Providencia, Escudo-de-Veragua, ainsi que toutes autres îles, îlots et bancs relevant de l'ancienne province de Cartagena sous la dénomination de Canton de San-Andrés, il est entendu que le territoire de ces îles, sans en excepter aucune, appartient aux Etats-Unis de Colombie.

"Du côté de l'Océan Pacifique, la Colombie possédera également à partir des îles Burica, et y compris celles-ci, toutes les îles situées à l'Est de la Pointe du même nom; celles qui sont sises à l'Ouest de cette pointe, étant attribuées au Costa-Rica."

What were President Loubet's reasons for establishing that frontier? None are assigned by the Award, which confines itself to conclusions without any expression of reasons.

This defect could have been remedied by the publication (or its communication to the parties) of the report prepared by the Examining Commission which was presided

over by Ambassador Roustan; but this most important document has remained during the whole of the time (and even up to the present) the subject of *absolute secrecy*; it has been impossible, therefore, to make use of that report—the most reliable possible source of knowledge on the subject—in order to find out the basic reasons for the decision and the meaning of its dispositions.

(10) GRAMMATICAL ANALYSIS OF THE LOUBET AWARD.

To facilitate an understanding of this Award, it would seem to be well to resort to the expedient of converting into the active voice the passive form of the initial clause in the disposing part of the decision and in that form to make its grammatical analysis. As is well known, the two forms, active and passive, are strictly equivalent.

PASSIVE VOICE.

La *frontière* entre les Républiques de Colombie et de Costa-Rica *sera formée par le contrefort de la Cordillère* qui part du Cap Mona sur l'Océan Atlantique et ferme au Nord la Vallée du Rio Tarire ou Rio Sixaola, puis par la chaîne de partage des de eaux * * *.

ACTIVE VOICE.

Le *contrefort de la Cordillère* qui part du Cap Mona sur l'Océan Atlantique et ferme au Nord la vallée du Rio Tarire ou Rio Sixaola, *formera la frontière* entre les Républiques de Colombie et de Costa-Rica, puis la chaîne de partage des eaux * * *.

Which of the two substantives, *contrefort* or *cordillère* is the subject of the principal clause, the action of which is expressed by the verb *former*? Is the counterfort the object that forms the frontier; or is that frontier formed by the cordillera? From the standpoint of grammar it must be admitted that that subject is the word "*contrefort*" and that word only; consequently the word "*cordillère*"

by being in the genitive, is incapable of serving as the subject. Even if it were, then no function would be left to be performed by the substantive *contrefort*, placed in the nominative, which is the proper case for the subject of every clause. The word *cordillère*, not by itself, but represented by the relative pronoun "*qui*," is in its turn subject to the two secondary clauses, the action of which is expressed by the verbs *partir* and *fermer*.

In opposition to the foregoing it may be objected that the relative pronoun "*qui*," used in the clause analyzed after the word "*cordillère*," has for its antecedent, not the word "*cordillère*," but the most distant substantive—*contrefort*; therefore it must be understood that the *contrefort* is the natural object or monument which, at the same time, *part* from Punta Mona, *ferme* on the north the valley of the Tarire or Sixaola River and *forme* the frontier. This objection is without foundation, because, grammatically, the relative pronoun "*qui*" must relate to its nearest antecedent. The following sentence is a common example of incorrect diction: "*J'apporte des joujoux pour mes enfants qui sont dans ma poche.*" It follows that "*cordillère*" is the word represented by the relative "*qui*." But even conceding that the opinion must prevail that the antecedent of the relative is *contrefort*—so that besides forming the frontier, it is the *contrefort* that *starts* from Punta Mona and *closes* the valley—it would result that, *no cordillera whatever* having been mentioned before or afterwards in the text, there would be confusion and vagueness in the clause which it would be impossible to remove, and the word "*cordillère*" would then become functionless and without application, and, what is more, without a complement for its determination; this is, of course, inadmissible when the text clearly states that that

cordillera starts (*part*) from Punta Mona, and closes (*ferme*) on the north the valley of the Sixaola River.

So restricted is the rôle assigned by the Award to the cordillera referred to, that in no other part thereof is that word found to have been used a second time. Its elimination would be subversive of the text and violate the rules of analysis.

There is, then, no other reference to *cordillera* than that contained in the excerpt quoted: and if, by an act that contravenes the most rudimentary principles of analysis, the indication or qualifications that distinguish and characterize it are stripped, to-wit, *to start from Punta Mona* and *to close the Valley of Sixaola*, there remain no means of ascertaining which cordillera is under discussion, where it is located, or the part it is to play.

It is evidently an error to take as the complement of the "*contrefort*" under discussion, *the Main Cordillera that divides the waters of the two oceans*, for what the decision says is this: "the counterfort of the cordillera which starts from Punta Mona * * * and closes on the north the valley of the Tarire or Sixaola River * * *."

The Main Cordillera is not mentioned in the decision; and the expression "the chain of the watershed between the Atlantic and the Pacific" is not equivalent to that cordillera, either grammatically or geographically, and for the very potent reason that a hydrographic chain is one thing and an orological chain is another, quite distinct.

So that the "cordillera" of the Award must be sought out by starting from Punta Mona and, necessarily, limiting on the north the valley of the Sixaola River.

Further on it will be shown that the imaginary geography of the decision is entirely at variance with the actual facts on the ground.

Nor can that cordillera be identified with "the watershed that divides the waters between the Atlantic and Pacific as far, approximately, as the 9th degree of latitude," which constitutes the second section of the frontier decreed; because two things that are distinct and absolutely unsusceptible of being confounded with each other, are:

(a) *A cordillera* formed always by a series or continuation of many mountainous masses, and

(b) *A line dividing waters*, which can as well be mountainous as level, and, indeed, is more frequently a combination of plains and mountains—a water-separating line that rarely coincides with the edge of the cordillera with which, in fact, it occasionally interlaces. There is neither synonymy or confusion in the meaning of the terms "*cordillera*" and "*chain that divides the waters*."

This latter, as is well known, at times runs over plains, as nearly level as those, for example, in the basin of the Dnieper River in southern Russia, where contour lines can hardly be established by the use of instruments. Somewhat similar in some points is the separation of the waters between the Mississippi and the St. Lawrence.

The frontier is formed by a *contrefort*, called K, of cordillera that may be called M. The cordillera—not the spur—starts from Punta Mona and closes the valley of the Sixaola. Where the spur K (the frontier) starts from, what course it follows or where it ends, or connects with the cordillera M, are things that the Award does not state. Assuming the existence of the cordillera M, which of the numerous spurs that it must have is the one designated as K, there is no way to ascertain. For the moment, what may be confidently asserted is the fact that the cordillera M is not the frontier. That body is undetermined, elusive, unascertainable.

There have not been lacking those who, to avoid difficulties, think and maintain that the subject of the principal clause—"to form the frontier"—is *multiple* and not *singular*; or, in other words, that the substantives *contrefort* and *cordillère* are jointly the subjects of the verb *former* in that clause. Thus, the frontier *would be formed* first by the *contrefort*, which would start from *Puntà Mona*, and then by the *cordillera* (singular) which, together with the *contrefort* would close the valley of the *Sixaola*. But to arrive at that conclusion it is necessary to transfer to the *plural* the *singular* number of the verb used in the text, and, besides, to introduce therein certain changes that misconstrue it and alter its status, on the one hand assigning to the *contrefort* a condition that is not given to it (of starting from *Punta Mona*) and, on the other hand, taking from the *cordillera* that very condition, which clearly is assigned to it—all of which tends not to clarify the clause but to falsify it.

From the foregoing analysis it results that there are in the sentence under discussion three different clauses, perfectly defined, as follows:

1. *The counterfort shall form the frontier.*
2. *The cordillera* (represented by the relative "*qui*") *starts from Punta Mona.*
3. *The cordillera* (represented by said relative) *closes on the north the valley of the Sixaola River.*

The first is the principal clause, and the two last (secondary) have precisely the object of indicating which *cordillera* is the one whose *contrefort* constitutes the subject in that clause.

From all of which it follows:

(a) That *the counterfort is not* the body that starts from Punta Mona, on the Atlantic Ocean; but that the *cordillera* is the body that starts from that point;

(b) That neither does the counterfort *close* the valley of the Tarire or Sixaola River—a function that is performed by the *cordillera* specified; and

(c) That the cordillera in question *is not the monument* designated to mark, or form, the frontier boundary between the republics. This is a rôle exclusively assigned to the *contrefort* mentioned.

These conclusions are mathematically exact; attention should now be given to the consequences that follow in their wake.

The counterfort and the cordillera, so often mentioned, are two distinct bodies or entities, although they bear a certain relation to each other.

The counterfort, performing as it does the office of forming by itself (independently of the cordillera) the frontier delimiting the territories of the two republics, where the said counterfort terminates there also terminates the frontier boundary; wherefore, as above stated, *it is the counterfort and not the cordillera that is the standard* of said delimitation.

Now, to determine which of the many counterforts that jut out from all cordilleras—and, therefore, from the one under discussion—is the one that must form the frontier between the contending countries, constitutes a problem for the solution of which the data are lacking, since the text, perhaps in the erroneous supposition that the said counterfort is the *only one*, vouchsafed no indication that will permit the individualization of that body.

Therefore Punta Mona is not the point from which starts the counterfort mentioned, because, according to the text, the only body that starts from that point is the cordillera referred to in the Award.

And, finally, not knowing, and being unable to guess the name, location, points of departure and arrival, longitude, direction and other peculiar characteristics requisite to determine, concrete, identify and verify the counterfort that serves as the frontier of the two bordering territories, *that frontier, as well as the counterfort destined to mark it*, is converted into something occult, nebulous and inextricable, something which, by no stretch of the imagination, can be translated into "*a line which shall divide for all time and with entire clearness the territory of the Republic of Costa Rica and the territory of the Republic of Colombia,*" as required by the basic arbitration treaty.

Such, then, is the logical conclusion from all the preceding premises; an analysis of the rest of the Award is omitted as of no practical interest.

(II) NOTES BY SEÑOR PERALTA.

When notified of the nature of President Loubet's Award Señor Peralta, Minister Plenipotentiary of Costa Rica, addressed a note to the Minister of Foreign Affairs of France, dated at Paris, the 29th of September, 1900 (Doc. No. 418), setting forth his interpretation of the decision rendered and praying for a confirmation of that interpretation by an explanatory act—a prayer which he reiterated in his note of October 23, following (Doc. No. 420).

In the first of those notes, Señor Peralta said to Monsieur Delcassé:

"This interpretation conforms with the evident meaning of the Award and with the topography of the

territory, as well as with the terms of the arbitration agreement. * * * I trust that this interpretation will be accepted by His Excellency, the President of the French Republic as corresponding as nearly as possible with his high intentions, and my government would appreciate very much his deigning to confirm this interpretation by an explanatory act."

In his second note Señor Peralta added:

"I avail myself of this occasion to repeat to Your Excellency as I had the honor to inform you in my letter of the 29th of last September, that the Government of Costa Rica interprets the first paragraph of the disposing part of the arbitral decision in the following manner, *as being the only one within the spirit and letter of this document, that might conform with the terms of the conventions which must rule the arbitration proceedings and especially with the terms of Article III of the Additional Convention of Paris of January 20, 1886.*"

That note concluded with this paragraph:

"This north-south direction of the frontier line between *Punta Mona* and *Punta Burica*, as the Government of *Costa Rica* understands it, is equally congruent with the course that the Republic of *Colombia* ascribes to the River *Sixaola* in its official maps. Moreover, recent explorations of that region justify this interpretation and *make evident that any other interpretation would include within the region granted to the Republic of Colombia a territory not in dispute, a fact that would be a positive violation of the terms of the compromise which limits the powers of the Arbitrator, and of the principles of International Law. This, then, cannot have been the intention of His Excellency, the President of the French Republic.*"

The explanation asked for by the Minister of Costa Rica was not an isolated instance of such a demand, for in similar cases explanatory acts relating to arbitral awards

have been asked for and granted; indeed, in the present case, on the 18th of September, 1900 (Doc. No. 416), there was communicated spontaneously to the parties, in the name of the Arbitrator, a rectification of the name of the Republic of Colombia which, in the third paragraph of the disposing part of the Award, had appeared under the appellation "United States of Colombia"—an appellation that had been abolished by the Constitution of 1886. Further, at the solicitation of the Minister of Nicaragua, whose country had not been a party to the litigation, satisfactory explanations were given concerning the inclusion of the islands of *Mangle Chico* and *Mangle Grande*, belonging to the domain of Nicaragua in the territory adjudicated to Colombia by the decision of His Excellency President Loubet. In the note addressed on the 22nd of October, 1900 (Doc. No. 419), by Monsieur Delcassé to Don Crisanto Medina, the former says:

"Under these conditions, the rights that Nicaragua may have to the possession of those islands remain unimpaired as in the past, since the Arbitrator has in nowise proposed to decide a question that *has not been submitted to him.*"

In the communication in which, under date of the 26th of September, 1900 (Doc. No. 417), Señor Peralta answered Monsieur Delcassé's note referring to the rectification of the decision in regard to the name of the Colombian state he gave expression to the following reminder:

"I seize this opportunity to respectfully remind Your Excellency and through you, His Excellency the Arbitrator, that by my letter of June 9, 1897, I remitted to Your Excellency a copy and translation of all the articles in force of the various arbitral conventions concluded between the two states, and under which the arbitral procedure should be governed."

This was the note with which Señor Peralta sent the *geographical chart* (Map A) on which, with yellow and red ink, he traced, respectively, *the lines that marked off the area in dispute conformably with the extreme claims of Costa Rica and Colombia.*

The Minister of Costa Rica added, in his said note of September 26, the following:

“Article III of the additional Convention of Paris of January 20, 1886, is thus understood: ‘The arbitral sentence must be confined to the disputed territory situated between the extreme boundaries already established; and it shall in no way affect the rights which a third party who has not intervened in the arbitration might be able to allege to the ownership of territory comprised between the boundaries indicated.’ As the islands lying at a distance from the continent comprised between the Mosquito Coast and the Isthmus of Panama, that is, Mangle Chico, Mangle Grande, Cayos de Albuquerque, San Andrés Santa Catalina, Providencia and others situated to the north of the 11th degree of north latitude and to the east of the Mosquito Coast, to which reference is made in the third paragraph of the disposing part of the sentence, *were not embraced within the jurisdiction of the ancient province of Costa Rica*, this Republic has not made of them a subject of litigation and *they have remained, as far as Costa Rica is concerned, wholly outside the controversy submitted to the judgment of His Excellency the Arbitrator.* I beg that Your Excellency may be pleased to take note of this observation since the Republics of Costa Rica and Colombia, the only parties in interest in this litigation, are bound by the aforesaid Article III of the Convention of Paris, and for all there is of right.”

In corroboration of what was said by Señor Peralta, it must be observed that even the most extreme line illegally

proposed by *Colombia in the course of the litigation*, was limited to the River San Juan de Nicaragua from its mouth as far as its confluence with the Sarapiquí, a point the coordinates of which were fixed in Colombia's claim. All of the islands referred to are to the north of the San Juan's mouth and not once were they mentioned as the subject of a claim on the part of Colombia—as to some of them, because she retained tranquil possession without objection on the part of Costa Rica, who never claimed to possess therein any rights or opposed the rights of any other party, as in the Islands of San Andrés, and as to others, because they were in the power of Nicaragua as territory adjacent to the Mosquito country, which was expressly excluded from the claim presented by Colombia.

(12) RESPONSE GIVEN BY THE MINISTER OF FOREIGN AFFAIRS, M. DELCASSÉ AND AN ANALYSIS THEREOF.

Minister Delcassé replied, in the note of November 23, 1900 (Doc. Nos. 421, 422), saying:

“For lack of precise geographical data, the Arbitrator has not been able to fix the frontier except by means of general indications; I deem, therefore, that it would be inconvenient to trace them upon a map. But there is no doubt, as you have observed, that in conformity with the terms of Arts. 2 and 3 of the Convention of Paris of January 20, 1886, *this frontier line must be traced within the limits of the territory in dispute*, as they are found to be from the text of said articles. It is according to these principles that the Republics of Colombia and Costa Rica *will have to proceed* in the material determination of their frontiers and the Arbitrator relies, in this particular, upon the spirit of conciliation and good understanding which has up to this time inspired the two interested Governments.”

THE DELCASSÉ NOTE.

An analysis of this document shows:

(a) That the Arbitrator's decision was declared to *lack necessary geographical data.*

(b) That because of that lack of necessary geographical data *he could not fix the frontier except by means of general indications.*

(c) That, consequently, he was of the opinion that it would be inconvenient to locate *definitely those general indications on a map.*

(d) That there is no doubt, as Costa Rica affirms, that the frontier line *should be traced inside the boundaries of the territory in dispute.*

(e) That, in their turn, the boundaries of the territory in dispute *should be fixed with regard to articles 2 and 3 of the Convention of Paris of January 20, 1886.*

(f) That to the Republics of Costa Rica and Colombia *belongs the duty of proceeding to the physical determination of their frontiers.*

(g) That such determination *should be conducted in accordance with the principles theretofore laid down.*

(h) That the Arbitrator *submits on this point, to the spirit of conciliation and good understanding which has so far inspired the two contending governments.*

Eight in number are the propositions contained in the note in question, which the Convention of Washington orders to be taken into account in reaching the decision on the questions submitted to the present arbitration. These propositions will be taken up in their order.

(a) FIRST PROPOSITION.

The parties presented to the Arbitrator two collections of geographical maps, to which the Award makes reference. That of Costa Rica is composed of two series of charts, the first numbering twenty-four and published under the title of "*Atlas Histórico-Geográfico de la República de Costa Rica, Veragua y Costa de Mosquitos*," (Brussels, 1900), and the other comprising sixteen maps attached as a reference to the work entitled "*La Géographie historique et les Droits territoriaux de la République de Costa-Rica*" (Paris, 1900). Colombia's collection, according to the Award, comprised numerous maps, with which Costa Rica was never given an opportunity to become acquainted, in spite of her minister's many diligent inquiries and even of the written protest of that diplomat against the failure to communicate them; and it would seem to be inconceivable that there could be lacking from that collection the official map of the State of Panama published by the Señores Ponce de León and Paz Bogotá, 1864 (Map XXXI) and the "*Atlas Geográfico-Histórico de la República de Colombia*," also official, published by Señores Paz and Pérez (Paris, 1889), which atlas comprises more than twenty maps. The Arbitrator likewise had under consideration a large number of descriptive documents, in print, exhibited by Costa Rica, and of an unknown number (perhaps as large) of documents exhibited by Colombia and catalogued in the volume mentioned in the Award under the name of "*Résumé chronologique des titres territoriaux de Colombie*," a volume the existence of which was unknown to Costa Rica during the litigation; nor did Costa Rica receive copies of the documents contained in that volume, or any notice thereof. With these antecedents, to say nothing of the geographical chart transmitted by Señor Peralta when

he besought the Arbitrator's acceptance, the lack of geographical data alluded to in the note of Minister Delcassé cannot be explained except as an indirect recognition of *manifest and essential error* in the sentence that adjudicated to Colombia a region situated, not only outside the circumscribed limits of the controversy, but expressly excluded from the claims of the party favored by its bestowal.

Even more inexplicable is this lack of geographical data for the decision, when it is remembered that one of the parties had petitioned, with much insistence, for the survey of the territories embraced in the dispute,¹ and that the petition was denied on the ground that the documents and maps presented were amply sufficient for a full decision of the respective rights of the parties litigant.²

(b) SECOND PROPOSITION.

On the face of the Award the frontier would appear to be unequivocally marked out in terms positive and conclusive, as though they were to be enforced in that region without further discussion; but in view of the doubts that had arisen and the request on the part of Costa Rica for a clarification of that decision, the Arbitrator was pleased to announce that, for lack of necessary geographical data, he informed the parties that the frontier fixed by him *should be understood* as being constituted by mere *general indications* only. In all civilized languages it is one thing to speak of "*decision*," "*determination*" and "*declaration*," acts characterized by constancy, finality, immutability—

¹Silvela, *Exposé*, Colombian ed., pp. 61, 62; Costa Rican ed., p. 61. Poincaré, *Deuxième Mémoire*, Colombian ed., p. 98; Costa Rican ed., p. 94.

²Doc. No. 411.

and quite another thing to use the word "*indication*," especially when such *indication* is "*general*." To indicate is to give one to understand, or to signify a thing by marks, signs, or by some token; and a general indication is one that does not *specify* or *individualize the thing indicated*. A frontier marked out by means of *general indications* (which is the case with frontier covered by the Rambouillet Award) is not "the divisional line, clear and incontrovertible, which must divide for all time and with entire clearness the territories of the parties litigant," contemplated by the arbitral treaty of 1880. That line of general indications, must of necessity remain *subject to future discussion*, and possibly to *serious dissensions between the parties*, in order to transform the *generality* of its terms into the *precision and individuation* requisite for erecting the monuments of physical demarcation in the territory in question. It was, then, clearly acknowledged in the note of Minister Delcassé, that the task assigned to the Arbitrator remained *unfulfilled*, that the controversy in great part was still open, and that the judgment rendered was, therefore, *lacking in finality*.

(c) THIRD PROPOSITION.

The Arbitrator deemed that *it was inconvenient* to specify on a map the general indications of the Award. This declaration was called forth by the request of one of the parties—perhaps both—for a map on which the course of the frontier adjudicated, should be made clear.

It is impossible to discover what the inconvenience may be to which allusion is made, unless it be the manifest discrepancy which the transfer of the text of the sentence to any map of the frontier region would produce between

the line representing the text and that other line which, at the moment of initiating the arbitral proceedings, and on the occasion of the request of one of the parties that the Arbitrator should deign to accept his august charge (and without opposition by the other party), had been traced on a map *marking out with precision* the area of the disputed territory submitted to the jurisdiction of the tribunal. That discrepancy made so manifest the very serious error committed through excess of power, that in reality the Arbitrator, who considered himself unable to remedy the defect, could not help finding it inconvenient to set forth on a map the general indications of his sentence. And not only would there result an enormous discrepancy between the line representing the text of the Award and the line clearly demarking the territory in controversy, but in case the former had been traced on a map, there must have been apparent, without a shadow of doubt, the distinction between the frontier of the Award and the other line specially traced by the favored party in his claim, with the express and special object of separating the territory, the adjudication of which it sought, and that other, bordering territory which that party recognized positively did not belong to it, but pertained properly to the opposite party as its undisputed domain.

It cannot be discovered what other kind of inconvenience could have attended the marking of the adjudicated frontier line on a map of the region, made with proper exceptions as to geographical coordinates, elevations above sea level and other particulars, with respect to which exact and precise data might be wanting, for lack of a previous, formal survey of the places, denied to one of the parties—data which, furthermore, were not absolutely necessary for the fixing of the frontier.

If the interpretation suggested by Costa Rica as an amicable means of correcting the manifest defect in the Award had appeared to the Arbitrator to be an unusual, impertinent and groundless demand, it is impossible to believe that, out of mere courtesy, Minister Delcassé would have written the note in which the *imperative definitions* of the Award were converted into *mere general indications not susceptible, without inconvenience, of being reproduced on a geographical chart*. It is evident that in that event he would have categorically ordered the parties to abide strictly by the decision; he would, for its better understanding, have committed to a map the decisions in the Award; and perhaps he would have even added explanations and amplifications of the text destined as much to clarify its meaning as to confirm its provisions. It will be seen in a moment that, far from this, the *decisions* of the Award, declared by Minister Delcassé's note to be *mere general indications*, unsusceptible of precise representation, *were placed as in suspense*—in view of the serious difficulty suggested by Costa Rica, to wit, that the literal interpretation of the Award involved the *violation of the terms of the agreement*.

(d) FOURTH PROPOSITION.

The question having been placed on this ground, and the Arbitrator having taken into consideration the bases of Costa Rica's protest—to the effect that any interpretation different from her's (which had been proposed as a means of accommodation) was a breach of the terms of the agreement—he had no difficulty in declaring that there was no doubt that, as Costa Rica maintains, the frontier line *should be traced within the boundaries of the territory in dispute*. It is to be observed that the Arbi-

trator does not say that the frontier declared by him, by means of general indications not susceptible of precise representation, is circumscribed by the boundaries of the territory in dispute—an affirmation that no Arbitrator would have omitted in such a case, if he had been persuaded that he had not exceeded his powers by having confined himself in his Award to the limits prescribed for his jurisdiction. The Arbitrator, in the sentence under discussion, makes no positive affirmation; he does not recognize the existence of the defect alleged by the complaining party; but it is very clear also that *he does not reject that idea*. Proceeding with laudable rectitude, he renders homage to the principle that *nothing can be held to be adjudicated that was not the subject of controversy*, and, consequently, not submitted to the jurisdiction of the judge, and leaves the door wide open to reclamation by the injured party.

With some reason could the Arbitrator have cherished the hope that the point in question being as clear as the mid-day sun, as well in its juridical as in its geographical aspect, there could be an agreement between the parties that would leave unimpaired the efficacy of the Award, when the time should come for its execution, by means of the voluntary retirement of the frontier adjudicated to a line that could never be trespassed upon. The Arbitrator could not guess that the winning party would try to adhere at any risk to an advantage obtained against right, and that the question which the sentence of 1900 should have decided would need to be urged thirteen years later with the ardor and to the extent that it is to-day being urged before the Honorable the Chief Justice of the United States of America.

(e) FIFTH PROPOSITION.

It is very evident that the Arbitrator gave most careful attention to the principal point made by Costa Rica concerning the excess of power shown in the Award; for not only did he accept the principle that the frontier should be traced *inside of the boundaries of the territory in dispute*, but extended his interest to the point of fixing those very boundaries and to the criterion that should be followed in their recognition. The injured party was in great danger lest the Arbitrator might have expressed the opinion that the broadening of the area in dispute, sought by Colombia in her claim, was legitimate. If such had been his opinion, the interpretation submitted by Costa Rica would have been partially rejected, since the line of that interpretation and the line of Colombia's demand are notably divergent—the latter to the prejudice of Costa Rica because of flagrant intrusion upon undisputed Costa Rican territory. The Arbitrator could not and did not accept as the standard the invading line of Colombia's demand, because an entirely different standard was established by the compromise convention of Paris, of 1886, in Articles 2 and 3. That is the basis for the fixing of the boundaries in controversy; not the demand which exceeded that basis and traced fanciful lines not founded upon the arbitral convention and without precedent in the diplomatic history of the controversy. Whether the convention at Paris is or is not sufficient in itself to prescribe the boundaries between the disputed territories and those exempt from the hazard of controversy, or whether there be in that instrument deficiencies that should be remedied in view of authentic data pertaining to the boundary dispute between Costa Rica and Colombia, are questions that will be fully discussed in another place,

but, for the present, it is well established that *the agreement, and not the subsequent demand*, must be fundamentally taken into account in order to elucidate and determine the transcendental point in question, which is—*what are the boundaries of the territory in dispute?*

(f) SIXTH PROPOSITION.

On the supposition that the sentence was without error and unassailable, it is clear that *it was the duty of the parties to proceed to the physical demarcation* of the frontier, which involved simply the execution of the arbitral Award that indicated it. In the present case, however, the above phrase comes to possess a distinct significance, because instead of demarcation, the word "*determination*" is used, which has a larger meaning, and because, in closing the clause the Arbitrator has to abandon the delicate point of the physical determination of the frontier to the parties, to whose spirit of conciliation and good understanding he makes a special appeal, based on the conduct of the two contending governments

For the simple execution of a sentence, clear and free from such a defect as the one formally denounced by Costa Rica, it certainly would not have been necessary to cast on the parties, or remand to them, the arduous task of proceeding to the physical determination of the frontier, with nothing more to go on than general indications, unsusceptible of representation on a map without inconvenience, indications which, on the other hand, had to be understood as applying to, and located upon the ground inside of the boundaries of the territories in dispute, which boundaries had to be adjusted in conformity with the convention of 1886, or by some other legitimate means that would leave unimpaired the rights of the parties if that con-

vention were to prove inadequate. Nor would it have been necessary to have recourse to the conciliatory spirit and mutual good will of the parties for the execution of a sentence clear and free from defects.

(g) SEVENTH PROPOSITION.

Minister Delcassé says that on the Republics of Colombia and Costa Rica shall rest the task of proceeding, "*according to these principles*," to the physical determination of their frontiers. Now, what are "*these principles*" to which the note refers? The principle that "the frontier line should be traced inside the boundaries claimed, which enclose the *territory in dispute*," instantly suggests itself as one of them. But as the note makes use of the plural, the inquiry arises, what is the other principle, or what are the other principles? And as, previously to that point the note speaks only of the necessity under which the Arbitrator labored of confining himself, in default of geographical data, to general indications, which he could not even specify on a map, it is to be supposed that the note gives to this consideration the character of a principle or basis for the determination of the frontier; that is to say, it abides by the indications made by the Arbitrator, *as mere indications of a general character*, these indications being dependent upon fact and experience.

Another principle is indicated by the note, further along toward its conclusion. This appears in the form of a recommendation by the Arbitrator to adhere to the spirit of concord and good understanding with which up to that time both governments had been inspired, or rather what might be called the *resultant of the history* of their attempts to settle amicably the question of boundaries.

(h) EIGHTH PROPOSITION.

The remanding of the task mentioned, the establishment of the principles to be followed for its fulfillment, and the Arbitrator's admonition to adhere to conciliation, is evidence of the strong desire entertained by President Loubet that the parties, in good faith and loyalty, following principles of equity and justice, and preserving toward the Arbitrator the high esteem which he merited from them, should agree amicably like brothers, without conflict, to the inevitable rectification of the frontier he declared, which technically could be annulled by the patent defect under which it labored, but which the losing party would be disposed to accept with good grace in exchange for the advantage of having the question settled, provided always that her rights over territory not submitted to controversy should be held to be unimpaired.

Costa Rica sincerely and deeply deplores the fact that it has not been possible to fulfill the just and noble desires expressed in the concluding part of Minister Delcassé's note; but her conscience is clear of any responsibility for the failure to realize those desires.

As a result of the Delcassé note, which acknowledges the possibility that the territory in dispute might have been trespassed upon, the sentence eventually became impaired and the boundary it declared for that territory became subject to a future understanding between the parties. Two points remained for discussion between them, which the Arbitrator could not decide:

1. Did, or did not, the Arbitrator overstep his powers? This point called for a mutual understanding, and if it was not forthcoming, the case required to be determined by a new arbitration according to the tenor of the Seventh Article of the Treaty of 1880.

2. In the event that there should prove to be such an overstepping of power a new difficulty would arise in restoring the frontier to the territory from which it could not have been legally advanced; and to adjust that difficulty, either the agreement recommended to the parties would have had to supervene, or it would have had to be decided by arbitration, conformably with what was agreed to in 1880. Therefore, the duty of reaching an amicable understanding was not cast by the Arbitrator upon the engineers charged with transferring the frontier line to the land, but upon the parties who should have first fixed upon the bases necessary for that operation.

PART SECOND

THE ARBITRATION AT
WASHINGTON

(189)

CHAPTER I.

ANTECEDENTS LEADING UP TO THE CONVENTION OF WASHINGTON OF 1910.

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- (2) THE TREATY OF 1905; THE PACHECO-GUARDIA LINE.
- (3) REJECTION OF THAT TREATY.

II. CONTROVERSY OVER THE "STATUS QUO" IN THE REGION OF THE SIXAOLA.

- (1) DIPLOMATIC CORRESPONDENCE BETWEEN THE UNITED STATES AND COSTA RICA WITH REGARD TO THE "AMERICAN BANANA COMPANY."
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I. TREATY OF PANAMA OF 1905.

- (1) DISAGREEMENT OF THE PARTIES AS TO COMPLIANCE WITH THE LOUBET AWARD.

The Convention of Washington of 1910, on which is based the arbitral proceeding pending before the Honorable the Chief Justice of the United States originated out of the disagreement of the parties over the fulfillment of the

Award of President Loubet and their desire to reach an amicable solution after the downfall of the direct settlement attempted by means of the Pacheco-Guardia Treaty of 1905.

The diplomatic representative of Colombia in Costa Rica, Señor Marroquín, addressed to the Minister of Foreign Relations of the latter republic three communications concerning the carrying into effect of President Loubet's Award. In the first, dated January 26, 1901 (Doc. No. 423), in terms of great cordiality, there was an invitation to join in the carrying out of the sentence. In the second, dated February 12 (Doc. No. 424), he stated that, inasmuch as the demarcation fixed by the Arbitrator was a natural one—"since it is formed by the summits of the mountain ridges and cordilleras," the parties could thenceforward properly occupy the territories adjudicated to each, and proposed the negotiation of an agreement or convention that should regulate the carrying out of the Award. In the third, written on the 27th of the same month (Doc. No. 425), after pointing out that the arbitral sentence was executory in character, "especially when the frontier is marked by natural and accidental boundaries such as cordilleras, rivers, etc.," and that international courtesy has established the doctrine that the parties should come to an understanding with respect to the performance of what has been decided, he declared that it is not essential that the agreement should be embodied in international compacts, but that it would be sufficient instead, for one government to communicate to the other, after due notice, the date when it proposed to occupy its allotted territory. To effect this he announced that about the middle of September, his government would send its delegates to take possession, and proposed

the appointment of a mixed technical commission, which, with an "engineer arbitrator," to be designated by the French government, would proceed to mark out the boundaries and set up the landmarks of the frontier territories.

The Minister of Foreign Relations of Costa Rica, Don Ricardo Pacheco, replied to the Colombian Minister on the 27th of July, 1901 (Doc. No. 427), stating that he was in accord with the proposal to settle the question of boundaries, either by a formal agreement or by a simple exchange of despatches, provided that both parties should *previously* come to an agreement as to the meaning of the Award, and to this end he enclosed the notes exchanged between Señor Peralta and Minister Delcassé; in the event, however, that Colombia should not assent to the interpretation placed upon that instrument by Costa Rica, he proposed that negotiations should be opened to overcome the difficulty presented by the fact that the Arbitrator, according to his own declaration, had not been able to fix the frontier for lack of geographical data.

(2) THE TREATY OF 1905; THE PACHECO-GUARDIA LINE.

In the beginning of November, 1903, the Republic of Panama was established, independent of Colombia. The Government of Costa Rica and that of the new republic, desirous of tightening their relations and avoiding all reason for discord, entered into a boundary treaty which was signed, at the city of Panama, on the 6th of March, 1905 (Doc. No. 431), by Don Leonidas Pacheco, Minister Plenipotentiary of Costa Rica, and Don Santiago de la Guardia, Secretary of Foreign Relations of Panama; accompanying the Treaty was an agreement in which the method of verifying and fixing the boundaries and land marks was regulated.

Forming a part of the treaty is a *declaration* signed by the same gentlemen, and bearing the same date, in which it is set forth that the signatory republics solemnly declare that *by the tenor of what is provided and established in the respective laws and treaties and the declarations made by the parties*, the dispute regarding territorial limits, maintained for many years by the Republics of Colombia and Costa Rica, was settled by the Award of President Loubet, which fixed the frontier by means of "*general indications*," "*the material determination of the same being left subject to the mutual accord*" prompted by the spirit of conciliation and good understanding by which up to now the two interested nations have been animated.

By virtue of that declaration, following the admonition of the Arbitrator to proceed in a spirit of conciliation, and taking into account the new necessities of the case as set forth in the preamble of the treaty, the following frontier was established:

"A line that, starting from *Punta Mona* on the Atlantic Ocean, proceeds in a southwest direction until it meets the Sixaola River, upstream from Cuabre. From this point the dividing line will proceed by the left bank of said Sixaola River to the intersection of this with the *Yurquín* or *Zhorquín* River. Here the frontier line will cut the thalweg of the Tarire or Sixaola on the left bank of the Yurquín and will follow in a southerly direction the watershed, first between the basins of the Yurquín on the east and of the Urén on the west and thence between the basin of the latter and the basin of the Tararia or Tilorio until arriving at the summit of the *Great Cordillera* that divides the waters of the Atlantic Ocean from those of the Pacific Ocean. From this place the line will proceed in an east-southeast direction along the summit mentioned to a point called *Cerro Pando*, which marks the beginning of the watershed between the Rivers Coto de Térraba and Chiriquí

Viejo. From here the frontier will continue along the summit of the mountains of Santa Clara, following the watershed between the Rivers Coto de Térraba and Esquinas, to the west, and the Rivers Chiriquí Viejo and Coto del Golfo to the east, until the headwaters of the River Golfito are reached, along which the line will continue until it empties into the Dulce Gulf. Between this last point and Puntarenitas a straight imaginary line will divide the waters of Dulce Gulf, the western portion of it remaining under the exclusive dominion of Costa Rica and the eastern part under the common dominion of both signatory Republics, excepting that which on their respective coast is called littoral sea and which shall be considered an integral part of the contiguous territory."

This treaty, comprising three parts, was, as has been stated, approved by the President of the Republic of Costa Rica on the 7th of May, 1906, and he appended to each of the conventions the usual formula; but the approval of the declaration (Doc. No. 438), which formed the first part of the treaty, was conditional and not absolute, as shown by the order relating to it, which provided as follows:

"SAN JOSÉ, May 7, 1906.

"In view of the foregoing Convention and inasmuch as it accords with the good and friendly understanding had between the High Contracting Parties to come to an agreement in the Boundary Treaty which was signed by them upon the same day, let it be approved, upon condition that the said Boundary Treaty be definitively ratified by the Public Authorities of the Republic of Panama, and with such understanding let the said Convention be transmitted to the Constitutional Congress for the legal purposes.

"ESQUIVEL."

"THE SECRETARY OF STATE IN THE

DEPARTMENT OF FOREIGN RELATIONS.

"JOSE ASTÚA AGUILAR."

The above mentioned condition was a precaution taken *ad abundantiam* in order that the treaty be considered as one and indivisible, although in form made up of three parts, as the Legislative Power of Panama clearly and positively acknowledged with the sanction of the Executive Power, in the law ratifying the same (Doc. No. 431), which law says with regard to the matter:

“The boundary Treaty between the Republic of Panama and that of Costa Rica is approved, which was celebrated *ad referendum* in this city by the Plenipotentiaries, General Don Santiago de la Guardia, and Licenciado Don Leonidas Pacheco, March 6, 1905, which consists of a Declaration, a Convention of Boundaries and a Convention for settling Landmarks, the text of which is as follows * * *.”

(3) REJECTION OF THAT TREATY.

The National Assembly of Panama, on the 26th of January, 1907, conditionally approved that treaty, or rather it inserted three additional explanatory provisions relating to the insular part, to the choice of mountain crests, to the cardinal points in the fixing of the lines, and to the geographical determination of the imaginary line between the mouth of the Golfito River and Puntarenitas.

On the 15th of June, 1909 (Doc. No. 461), the Costa Rican Minister of Foreign Relations, replying to the diplomatic representative of Panama who had asked him for the Pacheco-Guardia Treaty, said to him that his government had submitted it to the Congress in 1907; that the Committee on Foreign Relations had reported against its ratification, and that the House, after several

important discussions, resolved that any decision of the matter was useless since the manner in which the Assembly of Panama had approved the treaty implied its tacit rejection (Docs. Nos. 438, 439).

II. CONTROVERSY OVER THE "STATUS QUO" IN THE REGION OF THE SIXAOLA.

(1) DIPLOMATIC CORRESPONDENCE BETWEEN THE UNITED STATES AND COSTA RICA, WITH REGARD TO THE "AMERICAN BANANA COMPANY."

While the Pacheco-Guardia Treaty was pending, the United States put forward a claim in behalf of a North American company established on the left bank of the Sixaola. This brought about an interesting correspondence between the Government of that republic and the Government of Costa Rica, which determined the *status quo* of the latter's possessions on that river and brought about the negotiation of the arbitral convention at Washington.

Under date of the 27th and 29th of January, 1906 (Doc. No. 432), the Government of the United States transmitted by telegram and by a communication from its diplomatic representative to the Costa Rica Minister of Foreign Relations, the complaint of the "American Banana Company," of which a Mr. McConnell was president. The complaint was based on the attachment decreed by the Costa Rican authorities on that company's properties in the *valley of the Sixaola* and *Puerto Gandoca*, the government of the United States demanding of the governments of Costa Rica and Panama that until they should reach an agreement as to which held the sovereignty, they should

determine the *status quo* of the jurisdiction over that territory, and raise the attachment decreed on the company's properties.

The Costa Rican Minister of Foreign Relations replied, on the 3d of May, 1906 (Doc. No. 433), stating that Mr. McConnell had illegally occupied lands within the domain of Costa Rica and had fraudulently imported merchandise through the unauthorized port of Gandoca. For a long time, and under the existing *status quo*, he said, the divisional line between the two countries had been that of the Sixaola, Yorquín and Golfito Rivers, which leaves on the Costa Rican side the zone to which Mr. McConnell referred. And he added that during a long course of years the Government of Colombia, and later that of Panama, had so understood, as shown by the resolution of the Government of Panama dated August 2, 1904 (Doc. No. 430), and published in the *Gaceta Oficial* of the 23d of that month, which provided, that "although by the arbitral award pronounced by the President of the French Republic, Gandokin forms part of the Panama territory, this award has not been executed yet, and, while this is the case, the Government of this Republic (of Panama) *does not exercise jurisdiction at that place*, because situated within the limits of the disputed territory which originated the arbitration,¹ and because the *status quo* thus demands." That Government summing up affirmed therein that the territory of Gandoca and the Sixaola River, from the very bank of that river and from the Yorquín, "*have been dependent upon and are now dependent upon the sovereignty of Costa Rica.*"

Prior to the date of that dispatch, the Chargé d'Affaires of the United States, in his note of the 27th of April (Doc. No. 434), set forth the considerations on which his govern-

¹This last assertion is an evident error.

ment relied for its insistence on the aforesaid claim that, according to the Loubet Award of 1900, the territory embraced within the McConnell plantation had been adjudicated to Colombia (now Panama); that Mr. McConnell alleged that he planted and built his establishments in that territory in the year 1903, investing therein large sums of money under the authority of certain laws of Colombia relating to undeveloped lands, and that even were the frontier to be fixed conformably with the Treaty of 1905, the McConnell concession would be included within the jurisdiction of Panama.

The Costa Rican Minister of Foreign Relations, Don Luis Anderson, replied in a lengthy communication of the 26th of May (Doc. No. 435), explaining that the Award of President Loubet had not, according to the notes exchanged between Messrs. Peralta and Delcassé conferred on Panama any rights over the lands which Mr. McConnell claimed to occupy; that the Treaty of 1905 between Costa Rica and Panama was still pending the approval of the respective chambers, and that in the meanwhile the *status quo* established by the Treaty of 1825, and confirmed by the Convention of 1880 would continue to control. As tending to show Colombia's attitude with respect to that *status quo*, he cited the note of the Bogotá foreign office, dated March 16, 1891, in which it is stated that "The Republic, then being guided by especial sentiments of conciliation, PROPOSES that the provisional frontier shall be the River Doraces, from its outlet in the Altantic to its sources thence following the Cordillera of Las Cruces and thence along the River Golfito to its outlet in Dulce Gulf."

Señor Anderson was later sent to Washington on a special mission as minister plenipotentiary, and on the 9th

of December, 1907 (Doc. No. 440), besought the good offices and mediation of the United States for the settlement of the pending boundary question. That government at once accepted the task, confirming its acceptance in December, 1908, and welcomed the idea of an arbitration to be entrusted to the Honorable the Chief Justice of the United States.

The Assistant Secretary of State of the United States, in his note of February 16, 1909 (Doc. No. 455), gave Señor Anderson to understand that his government could not acquiesce in the continued dispossession of its citizens until the question of boundaries should be settled, and would, therefore, in the meantime, consider the territory to the north of the *de facto* line as within the jurisdiction of Costa Rica and the territory to the south as in the jurisdiction of Panama, for all legal effects and responsibilities of the respective governments.

To this Señor Anderson expressed his agreement in his note of February 23, receipt of which was acknowledged on the 11th of March.

(2) DISCUSSION BETWEEN THE REPRESENTATIVES OF PANAMA AND COSTA RICA WITH REGARD TO THE JURISDICTION EXERCISED BY THE LATTER REPUBLIC OVER THE SIXAOLA REGION.

The Panamanian Minister in Costa Rica, Don Belisario Porras, in his note of May 29, 1909 (Doc. No. 458), communicated to the Minister of Foreign Relations of that Republic the information received by his government to the effect that a public functionary appointed by the Government of Costa Rica as sub-inspector of the treasury and military commander, and accompanied by five subordinates, had left for Sixaola, and protested against that

action, expressing his surprise that it should have been taken at the very moment when the boundary question was in course of amicable settlement. The Valley of the Sixaola, the note went on to say, had been adjudicated to Panama, although occupied by Costa Rica.

“Panama has on the right bank of the Sixaola, from its mouth where its first village is located, up to the Yorquín, in fourteen others which existed before the Arbitral decision was pronounced, a population which has not room enough and which it would have been possible to establish or spread out, with officials, political, administrative, judicial and fiscal, on the left bank * * * and IT HAS NOT DONE SO
* * *”

The Costa Rican Minister of Foreign Relations, Don Ricardo Fernández Guardia, replied on the 15th of June (Doc. No. 461), saying that the appointment of a sub-inspector of the treasury and military commander at a place called Guabito, on the left bank of the Sixaola River, had for its object the fulfillment of a contract entered into by his government with the “United Fruit Company.” He further explained that that company was constructing a railroad bridge over the Sixaola River at Guabito, the point referred to; that at that point only did the company have the right to bring in merchandise destined to supply the depots or commissariates it was establishing on the left bank of the Sixaola—that is, on territory subject to the jurisdiction of Costa Rica in conformity with the existing *status quo*—and that for these reasons there had been placed at that point a fiscal authority charged with the enforcement of the treasury regulations and clothed with the power necessary to cause them to be respected and obeyed. The Government of Panama, he went on

to say, had, in its decision of August 2, 1904 (above cited), recognized the *status quo* of the jurisdiction of Costa Rica over Gandokin, or Gandoka, and this territory was surrounded by the same conditions as those then under discussion; "that is to say, on the left bank of the River Sixaola, which separates us from the Republic of Panama, up to the intersection of the Yurquín or Zhorquín."

On the 7th of June (Doc. No. 462), Señor Porras requested Señor Fernández Guardia to inform him what was "the agreement in force, known as the *status quo*," which established that divisional line; and the latter replied, on the 22d (Doc. No. 463), stating that there was no special agreement called the "*status quo*," but that that *status* resulted from what had been agreed to with Colombia on various occasions, the *de facto* line on the Atlantic side being, "the River Sixaola to its junction with the Yorquín or Zhorquín (also called Sixaola, Culebras or Dorados), the Yorquín to its watershed."

In view of the above reply, Señor Porras addressed to Señor Fernández Guardia a lengthy note (Doc. No. 464), formulating the following propositions:

1. The Central American Federation of which Costa Rica had formed a part, and the first Republic of Colombia, accepted the *uti possidetis* of 1810 or 1820 as the principle under which to define their respective frontiers.
2. The Culebras River is not the Sixaola.
3. Panama, and formerly Colombia, have both exercised jurisdiction over the Atlantic coast as far as Punta Mona.
4. Panama holds that the line of the Pacheco-Guardia Treaty is the same line of the *status quo*.
5. If the Sixaola River is the Culebras, why should it be the Yorquín?

Señor Fernández Guardia replied to this note, point by point, in his own note of even greater length and most noteworthy in its clearness and wealth of data (Doc. No. 465), as follows:

Point 1. Minister Fernández Guardia abides by the principle of the *uti possidetis* established by the Treaty of 1825; but holds that the jurisdictional *status quo* defined in the treaties is one thing, and quite another the *de facto line* concerning which there is no treaty whatever. And in proof of the fact that there really is a line that delimits possession in fact, or provisional possession, he cites the recent presentation of documents by Colombia, and even Panama, in recognition and establishment of that line.

Point 2. He affirms that in Costa Rica the only river which has been known, or is known, by the name of *Culebras*, is the Calobébora or Chiriquí. In Colombia, he continues, it has been believed at times that the names Dorados or Doraces and Culebras refer to different rivers, until lately, when, according to various documents of Colombian and Panamanian origin, it has come to pass that the name Culebras is used interchangeably with Dorados and that they are the same river, to wit, the Sixaola.

Point 3. He insistently denies that either Colombia or Panama has exercised jurisdiction in any instance or at any time to the north of the Sixaola River as far as Punta Mona, stating that there is in existence abundant evidence to prove that after the usurpation of Bocas del Toro, in 1836, Colombia invariably took the Changuinola as her extreme point of occupation, and lately the mouth of the Sixaola. Even though, by virtue of the Loubet Award, Costa Rica might have to deliver up the territory of Gandoca, the fact remains that she has continued in possession

of it and exercises jurisdiction thereover as she had done prior to that decision.

Point 4. He also denies that the line agreed to in the Pacheco-Guardia treaty of 1905 should be the line of the *status quo*, because that treaty was not ratified and because the line therein established is not the *de facto* line—since Costa Rica is in possession of the territory comprised between Punta Mona and the River Sixaola—nor the *de jure* line since Costa Rica has a right to the territory comprised between the Golfito and Punta Burica.

Point 5. He shows that by recognizing the Sixaola River as the Culebras, the divisional line must of necessity follow the course of the Yorquín.

He also shows that the Sixaola is not a river springing from a cordillera; it is formed by the confluences of the waters of the Rivers Telire, Coén, Lari, Urén and Yorquín, the latter being the nearest to the coast. The combined volume of all these waters, after the affluence of the Yorquín, is what is properly called the "Sixaola;" wherefore, as what Colombia and Costa Rica proposed was to establish a line that should coincide "as far as possible with the line that separates the actual possessions of Colombia and Costa Rica, in such way that in its establishment the present state of things be not disturbed" according to the frank statement in the note of Señor Suárez (Doc. No. 381), it was impossible to take any other upper waters, for here no Sixaola River exists—only those waters nearer the sea, that are the first met with on the way up the mountains, which are none other than those of the Yorquín.

He says, on the other hand, it is an unquestionable fact that when the agreement as to the existing *status quo* came to an end—and for a considerable time prior thereto—Costa Rica, with careful attention and persistent

jealousy held and preserved the actual and effective possession of such settlements as *Sipurio* (capital of Talamanca, on the left bank of the Urén River) and such Indian villages as *Urén*, *Coén*, *Cabécar*, *Bribri*, *Túnsula*, etc., at the points of confluence of the great rivers that contribute to form the Sixaola, and a *status quo* that has for its special and recognized object the establishment of a state of things in such manner as to *prevent the disturbance of the respective possessions* of the parties, could scarcely be taken in a diametrically opposite sense; that is, a sense that would deprive Costa Rica of secular possessions which, on the contrary, she continues to enjoy and preserve, unimpaired, up to the present day.

The evidence presented by Costa Rica showing its possession of the places mentioned is abundant and irrefutable; whereas Colombia did not possess, either to the east or south of the Sixaola River, more than a single settlement—the hamlet of that name (Sixaola) to which reference is made in the above cited correspondence of Dr. Pradilla. This state of things subsisted in 1891, as shown by the note of Señor Suárez when in view of the fact, he *proposed* to Costa Rica, on March 16 (Doc. No. 381), a provisional frontier marked on the Atlantic by the *Doraces* (Sixaola) River. The proposition was not accepted, however, and for the very excellent reason that its evident object was the entrance by Colombia upon territories on the right bank of that river, of which Costa Rica had been in possession ever since 1563. It is to be noted that Señor Suárez speaks *only* of a spot called *Sixaola*, the name of the hamlet located at the mouth of the river, on the same spot where, in 1540, the city of Badajoz was founded by the unfortunate Hernán Sánchez; he then juggles with the ambiguously-named *Sixaola* (hamlet) to create the impression that Colombia possessed

the eastern region of the *Sixaola*, thus extending the signification of this appellation to include the river.

Fortunately, as has been said, the proposal was rejected by Costa Rica; and Señor Suárez's note itself shows that Costa Rica's recognition of the *status quo* was limited to the *spot Sixaola* (the hamlet) and to the *littoral* formed by the continuation of that spot in the direction of the Escudo de Veragua. It must be remarked here that the Colombian occupation of Sixaola (the hamlet) dates from 1869-1870, not earlier.

On the other hand, the Yorquín River has been repeatedly given, the names of *Culebras* and *Dorados*,¹ as was stated by the Costa Rican Minister of Foreign Relations, Don Manuel V. Jiménez, in his note of February 13, 1894 (Doc. No. 398), addressed to the Minister of Foreign Relations of Colombia, and confirmed by Señor Peralta in his notes to Minister Delcassé of September 23, and October 29, 1900; the fact is also demonstrated by the following maps:

Friederischen, 1876 (Map XXXIII).

Bovallius, 1885 (Map XXXV). In this map the sources of the Culebras or Dorados River are shown to lie N. 17° E. of Pico Blanco (Kamuk) at a distance equal to 7½ kilometers from that peak. The general direction of its course to its disemboquement in the Tarire River in a longitude of 44½ kilometers is that indicated above (N. 17° E.).

The important diplomatic correspondence, concerning the *status quo* in the Sixaola region, terminated with two interesting notes which refer to the concessions of land which Costa Rica had made, or might make, in that region.

Señor Porras, in his note of August 14, 1909 (Doc. No. 466), commenced by asking what concessions of land had been made by Costa Rica, before and after the Loubet

¹León Fernández, *Documentos para la Historia de Costa Rica*; Vol. III. p. 32. San José, C. R., 1883.

Award; within the boundaries prescribed in that Award. He indicated that, according to his investigations, all the productive lands on the left bank of the Sixaola, between that river and the counterfort of the cordillera that comes to an end in Punta Mona, on the one part, and at the mouth of that river and the point on its bank called Cuabre, had been ceded or alienated to the banana concern known as the "Northern Railway Company" or to the "United Fruit Company", and to certain foreign individuals as well as citizens of the country. He enumerated 18 parcels of which he has been informed, and which comprise 15,624 hectares; among them were 6,000 granted to that company. He maintained that the territory in dispute, and under submission to the decision of President Loubet, was that comprised "between the Escudo de Veragua, the Calobébora River and the Chiriquí River to the east of the Punta Burica, on the one hand, and, on the other, Cape Gracias a Dios and the River Golfito at the Gulf of Dulce." He asserted that the ownership of this vast territory was in suspense, neither of the two parties being able to consider itself secure in its right to the future exercise of full sovereignty therein; but that after the award each knew on what to rely, and each lacked absolutely the right to dispose of what had been adjudicated to the other. He concluded by protesting against all the concessions that may have been made outside the limits fixed by that Award.

Señor Fernández Guardia, in his note of September 22 (Doc. No. 467), following, rejected the protest on the ground of the difficulty in understanding and applying the Award, and that the concessions were understood to be without prejudice to the sovereignty and, further, that the theory of suspense of sovereignty was inadmissible.

He recurred to what had transpired with respect to the "American Banana Company," and ended by calling attention to the fact that the Supreme Court of the United States, in the case of *The American Banana Company vs. The United Fruit Company* (decided April 26, 1909; 213 U. S., 347), held that "the fact, if it be one, that *de jure* the estate is in Panama, does not matter in the least; sovereignty is pure fact. The fact has been recognized by the United States, and, by the implications of the bill, is assented to by Panama" (Doc. No. 441).

CHAPTER II.

CELEBRATION OF THE CONVENTION OF WASHINGTON OF 1910.

I. MEDIATION BY THE GOVERNMENT OF THE UNITED STATES.

- (1) UNFRUITFUL EFFORTS; DIFFERENT POINTS OF
VIEW OF THE INTERESTED PARTIES.
- (2) SATISFACTORY SOLUTION; MR. KNOX'S MEMO-
RANDUM.

II. ARBITRAL CONVENTION OF 1910.

ITS CONTENTS; TEXT OF ARTICLE I.

I. MEDIATION BY THE GOVERNMENT OF THE UNITED STATES.

- (1) UNFRUITFUL EFFORTS; DIFFERENT POINTS OF VIEW
OF THE INTERESTED PARTIES.

As has been heretofore indicated, Don Luis Anderson, the Costa Rican Minister at Washington on special mission on the 9th of December, 1907 (Doc. No. 440), besought the good offices of the United States Government in the settlement of the boundary question pending with Panama, and, on the 19th of that month, received a satisfactory reply (Doc. No. 624). But the presidential campaign that commenced shortly thereafter in Panama, forced the suspension of business of all kinds. On the 21st of November 1908 (Doc. No. 442), Señor Anderson renewed his request,

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and, on the 1st of the following December, the Assistant Secretary of State answered informing him that the Government of the United States would gladly lend its impartial good offices and mediation to bring that controversy to an end (Doc. No. 443).

After accepting this mediation, Señor Anderson, in his note of December 7, 1908 (Doc. No. 445), presented a *memorandum* in which he set forth the history of what had taken place with respect to the Award of President Loubet, and concluded with the expression of Costa Rica's desire that the American government should take steps to secure the carrying into effect of the recommendation of Minister Delcassé; that is, that there should first be determined what interpretation should be given to the Award, and, consequently, through what points the frontier lines should run.

"Thus," he said, "the controversy would be terminated and Costa Rica would be disposed to carry out the decision without delay, but if contrary to what is to be desired, it should appear in the course of the negotiations *that the Loubet Award suffers from defects, which according to the principles of International Law, would impair its validity, it will be necessary, according to the Convention of 1880, to submit the whole boundary dispute to a new arbitration; and in such case, Costa Rica will always be ready to conclude the respective Convention of Arbitration.*"

On the 21st of December, 1908 (Doc. No. 447), the American Minister at Panama informed the Minister of Foreign Relations of that republic that the United States would be glad to lend its impartial good offices and mediation to Panama and Costa Rica in the hope that the boundary dispute, of such long standing, might be speedily settled to the satisfaction of both parties. Whereupon the

Minister of Foreign Relations of Panama, on the 28th of the same month (Doc. No. 450), answered as follows:

“The Panamanian Government is animated with a desire respecting the suggestion of Your Excellency of submitting the settlement of this matter to the able and impartial arbitration of the Chief Justice of the Supreme Court of the United States, which it accepts in principle, and being under the obligation, as my Government is, to adhere to the terms of the award rendered by President Loubet in September, 1900, and also a compliance with the provisions of Article III of the National Constitution being obligatory upon the Republic of *Panama*, my Government desires to know before coming to a conclusion relative to arbitration, the points to be considered by the Tribunal of Arbitration.”

Informed of this reply, through the telegram from the American Minister in Panama to his Secretary of State (copy of which was sent him), Señor Anderson addressed a note to the Minister on the 28th of December, 1908 (Doc. No. 449), in which he said that, even though, by the defects of the Award, and the fact that the question had been left open to the agreement of the parties in interest, it would be better to submit the same in its entirety for a new and more clear and exact decision—since Panama was inclined to fix the boundary in conformity with the Loubet Award—he begged to suggest the following as the points that should be submitted to the new arbitration.

1. *Whether the Loubet Award is free from defects which, under the principle of international law, would deprive it of legal force.*
2. *If it should be found that it is not defective, to determine what interpretation should be given to it, and through what points the frontier should be traced.*

(2) SATISFACTORY SOLUTION; MR. KNOX'S MEMORANDUM.

The year 1909 passed without reaching any result, for each of the parties insisted upon its own opinion. Panama did not defend the Award against the objections made to it by the opposite party and confined herself to maintaining that the only thing which could be done was to treat concerning the method of carrying the Award into effect.

The Government of the United States, desirous of putting an end to the matter in the interest of the tranquility of both countries and of the American citizens concerned therein, made known to the Government of Panama, by telegram of February 1, and to Costa Rica, by a communication of February 2, 1910 (Doc. No. 468), addressed to Señor Anderson, the following:

*"That there was no intention to limit the boundary issue between Costa Rica and Panama to the mere interpretation of the Loubet Award; that the United States Government thinks, and has said, and now repeats that the crucial matter to be submitted to arbitration is the respective contentions of the two Republics as to the true boundary line; * * * that the unavailing negotiations with Costa Rica for nearly ten years last past had made it clear beyond peradventure that this long-standing controversy cannot be settled by insisting on a mere interpretation of the Loubet Award. That during the said period Costa Rica has insisted that the Loubet Award was void in part at least on the ground of ultra petita, or impaired or vitiated by ambiguity and uncertainty, and that this contention was not in violation of the original agreement of submission which contemplated an award within the defined limit of the claims and not technically void for uncertainty."*

The Panamanian and Costa Rican Ministers Plenipotentiary on special mission, Señores Porras and Anderson, held a conference in Washington on the 14th of February,

1910 (Doc. No. 469), in the presence of the Minister of Panama, Señor Arosemena and of Messrs. Hoyt, Dawson, and Doyle, representing the Department of State. That conference was of much interest, for the parties, in the form of questions and answers, fixed their respective positions with respect to the Loubet Award by means of a map filed herewith (Map XLVII).¹

At that conference Señor Porras, in response to a query by Señor Anderson as to how he proposed to reach a settlement of the question, replied that he would soon submit a proposition which he believed would have to be accepted in view of the pronouncement of the Department of State. He referred, doubtless, to the communication he sent in on the 20th of the same month of February to the Secretary of State, stating that his government was constitutionally incapacitated to consent to the annulment of the Loubet Award; and that, inasmuch as "the same difficulty which made it impossible for President Loubet *to define the line* so exactly as to avoid dispute would make it equally impossible for the new arbitrator to do so," he proposed that a survey and examination be made of the line, and of the territory through which it runs, by engineers commissioned therefor, and that such commission fix or mark out the frontier in a manner that will leave no doubt concerning the topography of the land and the true course of the frontier line, thereby resolving with finality and authoritatively all questions that may arise.

In the event that the commission should not come to an agreement, or that the two governments should not conform to its findings, he proposed that the Honorable, the Chief Justice of the United States should decide.

¹Map showing various boundary lines between Costa Rica and Colombia (now Panama) by B. W. Palmer, Boston, 1907.

On the 1st of March, 1910 (Doc. No. 471), a further conference was held at the Department of State, at which the Secretary, the Honorable P. C. Knox, resumed the discussion of the question in the terms in the following *memorandum* of the same date:

"The Secretary of State is well aware of the desires of *Costa Rica*, that the proposed arbitration shall be as broad as possible. He is equally sensible of the considerations which impel the Government of *Panama* to insist upon the Loubet Award as a basis for the definitive determination of the boundary. It was a source of great satisfaction to take note of the fact that both parties are in practical agreement as to the boundary line from the Pacific Ocean to a point beyond *Cerro Pando* on the Central Cordillera. The fact that difficulties to overcome are thus confined to the determination of the line thence to the Atlantic, caused the Secretary of State to entertain the gratifying hope that, in view of the conciliatory and candid spirit animating the two governments, it would surely be a matter of no great difficulty to reach a satisfactory solution.

"Animated by this hope and in response to the desire of both governments that the United States should lend its good offices in connection with the proposed arbitration," the Secretary of State suggested "that the *compromis* stipulate the acceptance of the line to the extent above mentioned to be arbitrated as follows: What is the boundary line between the Republic of Costa Rica and Panama under and most in accordance with the true interpretation and correct intention of the Loubet Award in the light of all the historical, geographical, topographical and other facts and circumstances surrounding it, as well as under the established principles of international law."

This *memorandum* accepted by both parties, Señores Anderson and Porras proceeded to draw up the convention

which they signed at Washington on the 17th of March, 1910, and which is designated by their names.

II. ARBITRAL CONVENTION OF 1910.

(1) ITS CONTENTS; TEXT OF ARTICLE I.

This convention (Doc. No. 473), begins by declaring that it is entered into by the two republics "in view of the friendly mediation of the Government of the United States of America and animated by the desire to solve in a convenient manner, their differences in respect of the frontier." It comprises eight articles, the first of which relates to the submission of the case to the arbitration of the Honorable Chief Justice—under the following terms:

"The Republic of Costa Rica and the Republic of Panama, although they consider that the boundary between their respective territories designated by the Arbitral Award of His Excellency the President of the Republic of France the 11th of September, 1900, is clear and indisputable in the region of the Pacific from Punta Burica to a point beyond Cerro Pando on the Central Cordillera near the ninth degree of north latitude, have not been able to reach an agreement in respect to the interpretation which ought to be given to the Arbitral Award as to the rest of the boundary line; and for the purpose of settling their said disagreements agree to submit to the decision of the Honorable, the Chief Justice of the United States, who will determine, in the capacity of Arbitrator, the question: What is the boundary between Costa Rica and Panama under and most in accordance with the correct interpretation and true intention of the Award of the President of the Republic of France made the 11th of September, 1900?"

"In order to decide this the Arbitrator will take into account all the facts, circumstances, and considerations which may have a bearing upon the case, as well as the limitation of the Loubet Award expressed in the letter of His Excellency Monsieur Delcassé, Minister of Foreign Relations of France, to His Excellency Señor Peralta, Minister of Costa Rica in Paris, of November 23, 1900, that this boundary line must be drawn within the confines of the territory in dispute as determined by the Convention of Paris between the Republic of Costa Rica and the Republic of Colombia of January 20, 1886."

Article 2 contemplates the possible need of making a survey and measurement of certain territory in the event that the Arbitrator calls for it, or it is asked for by the parties, and provides that, in such event, the same shall be made by a commission composed of four engineers.

Article 3 establishes the respect in which the property concessions and real rights shall be held by the respective governments in territories that might have to pass from the jurisdiction of one to that of the other.

Articles 4, 5 and 6 relate to the procedure and the expenses of the arbitration.

Article 7 declares that the arbitral sentence shall be held as a treaty, conclusive and obligatory upon the contracting parties beyond the possibility of attack.

And, finally, Article 8 provides that the convention shall be submitted to the approval of the respective congresses and that the ratifications thereof shall be exchanged with all due expedition.

The convention was in fact ratified by the respective congresses of the Republics of Costa Rica and Panama and ratifications duly exchanged.

CHAPTER III.

JURISDICTION OF THE CHIEF JUSTICE AS ARBITRATOR.

I. FINALITY OF THIS ARBITRATION AND THE QUESTION SUBMITTED THEREIN.

- (1) TEXT OF THE WASHINGTON CONVENTION.
- (2) POWERS CONFIDED TO PRESIDENT LOUBET.

II. CRITERION OF THE ARBITRATOR FOR DETERMINING THIS QUESTION.

- (1) CRITERION DEDUCED FROM THE DIFFICULTIES AND RESULTS OF THE MEDIATION BY THE UNITED STATES.
- (2) CRITERION EXPRESSLY ESTABLISHED BY THE WASHINGTON CONVENTION.

III. RESULTANT POWERS OF THE ARBITRATOR.

- (1) DEFINITIVE SOLUTION OF THE BOUNDARY QUESTION ON THE BASIS OF THE LOUBET AWARD.
- (2) POSSIBILITY OF EXPLAINING, CORRECTING AND CARRYING OUT THAT AWARD.

I. FINALITY OF THIS ARBITRATION AND THE QUESTION SUBMITTED THEREIN.

- (1) TEXT OF THE WASHINGTON CONVENTION.

The arbitral proceeding having been opened before the Honorable, the Chief Justice of the United States, and the parties being about to formulate their respective claims, it becomes necessary before everything else, to

define the scope of the Arbitrator's powers, beginning with a determination as to the finality of the arbitration and as to the nature of the question submitted.

According to the preamble of the Convention of Washington of 1910, by which this arbitral proceeding is to be governed, the parties entered into it animated by the desire, or rather with the purpose "to adjust in an adequate manner their differences on account of their boundary line."

In the first paragraph of Article 1, the contracting republics positively assert that the frontier between their respective territories designated by the arbitral Award of His Excellency the President of the French Republic is clear and unquestionable as to the region on the Pacific side from Punta Burica to a point in the Central Cordillera above Cerro Pando near the ninth degree (9°) of north latitude. But they then proceed to declare that they have been unable to come to an agreement as to the understanding that should be given to the Arbitral Award with respect to the rest of the frontier line; whereupon, TO ADJUST THEIR DIFFERENCES they agree to submit them to the decision of the Honorable, the Chief Justice of the United States.

The frontier differences which divided the Governments of Costa Rica and Panama at the moment of signing the arbitration treaty were well understood and established in the diplomatic correspondence exchanged: *a*, between the representatives of Costa Rica at Paris and the Minister of Foreign Affairs of the French Republic; *b*, between the diplomatic representative of the Republic of Colombia at San José and the Minister of Foreign Relations of the Government of Costa Rica; *c*, between the latter and the Minister of Foreign Relations of the Republic of Colombia;

d, between the diplomatic representative of Costa Rica at Washington and the Secretary of State of the United States; *e*, between the diplomatic representative of Panama at San José and the Costa Rican Minister of Foreign Relations; *f*, between the Secretary of State of the United States and his diplomatic agent in Panama and the Minister of Foreign Relations of that republic, and finally, *g*, between the Secretary of State of the United States and the diplomatic representative of Panama at Washington—all of which appear among the documents annexed to this Argument.

The constant tendency of Panama has always been, as it was formerly Colombia's, to reduce and confine the question, or questions, at issue between Costa Rica and Panama to a *mere matter of clarification or interpretation of the Award of September 11, 1900*, just as on Costa Rica's part, it has been her irrevocable decision *not to accept that Award in so far as, from a careful examination of its dispositions, it would result that it adjudicated to Colombia Costa Rican territory which was not in dispute and consequently, not submitted to the jurisdiction of the Arbitrator*. This attitude Costa Rica made known to the President of the French Republic immediately on learning the contents of his Award; and her assertion was reiterated, in even clearer and more exact terms, by means of notes addressed to the Minister of Foreign Affairs of the French Republic on the 26th of September (Doc. No. 417) and the 23d of October, 1900 (Doc. No. 420).

This irrevocable decision was also brought to the knowledge of the Colombian Government by Costa Rica in its note of July 27, 1901 (Doc. No. 427), in which the following views were expressed:

(a) Costa Rica will listen with special pleasure to any proposition tending to bring to an end this ancient quarrel, and will agree, either by a formal agreement or through a simple exchange of notes, that a basis shall be established under which the demarcation shall be carried out, *provided that previously and in the usual form both parties shall have come to an understanding respecting a preliminary point the solution of which is an obligated antecedent to the operation of setting up landmarks.*

(b) *That point is the exact direction of the dividing line on the Atlantic side.* As to this particular point, the Government of Costa Rica, at the first moment it had knowledge of the decision, gave instructions to its representative in Paris that he should declare before the Arbitrator that Costa Rica interpreted the judgment as appears in the statement presented for that purpose, of which a copy was forwarded. The explicit statement of the Minister of Costa Rica was answered by the Arbitrator in terms of perfect accord, as may be seen in the transcript of his reply, which was likewise forwarded.

(c) In proceeding thus the Government of Costa Rica was inspired with the elevated purpose *of purging that solemn decision of every defect contrary to the spirit of justice with which it was certainly animated, since any interpretation different from that which Costa Rica has given it and which, by impairing her indisputable rights, went beyond the claims of Colombia in the litigation, would take away the force of the Award.*

(d) Considering, then, that the view of Costa Rica tended to preserve intact the validity of the Award and that it was on the other hand supported by the opinion of the Arbitrator, it was hoped that the Government of Bogotá would gladly accept it. But in the unexpected event that

this did not come about, and *as an agreement in this particular was indispensable* (since the Arbitrator, according to his own expression, for lack of precise geographical data, *could not fix the frontier except by means of general indications* which he thought was inconvenient to set out on a map), the Government of Costa Rica considered it desirable *to open negotiations looking to a termination of the difficulty* within the scope of the question submitted, and with the conciliation and good understanding which the high authority of the Arbitrator enjoined upon the parties.

Costa Rica maintained this same ground from 1901 down to 1910; and so it was that on the 2d of February of the latter year, in a note addressed by the Honorable P. C. Knox, Secretary of State of the United States, to Señor Anderson, Costa Rican Minister on Special Mission before the Government of the United States, the following views were expressed (Doc. No. 468):

“Accordingly, the Department telegraphed yesterday, February 1, instructing our Chargé d’Affaires at Panama to call the attention of the Government of Panama to the fact that the Department’s telegram to him, of December 7 and its instruction of December 18, *made it clear that there was no intention to limit the boundary issue between Costa Rica and Panama to the mere interpretation of the Loubet Award; that the United States Government thinks, and has said, and now repeats that the crucial matter to be submitted to arbitration is the respective contentions of the two Republics as to the true boundary line; that by the foregoing statement of the real issue this Government merely indicates its friendly opinion and disclaims any desire to influence the free agreement of the two Republics or the course of the proposed arbitration; * * ** but that this Government nevertheless deems it proper to say that in view of all the facts, it has felt some degree of surprise upon learning

*the tenor of the powers of the Special Minister of Panama, which are not full powers as designated in certain passage thereof, but powers restricted to the negotiation of a protocol founded upon the strict acceptance first and above all by both countries of the Loubet Award, and further hampered, it seems, by special instruction which limit his freedom and independence of action; * * * that this Government further feels that its own attitude, assumed before the Special Minister of Panama was accredited, shows that it believed full powers were needed and were confidently awaited in order to settle the real and broad question as to the true permanent boundary, and that the unavailing negotiations with Costa Rica for nearly ten years last past had made it clear beyond peradventure that this long-standing controversy cannot be settled by insisting on a mere interpretation of the Loubet Award. That during the said period Costa Rica has insisted that the Loubet Award was void in part at least on the ground of ultra petita or impaired or vitiated by ambiguity and uncertainty, and that this contention was not in violation of the original agreement of submission which contemplated an award within the defined limit of the claims and not technically void for uncertainty. That this Government represents further and suggests that—considering these facts—the terminal points of the Loubet Award should now be finally agreed to as accepted by both parties, namely, Punta Burica and Punta Mona, and that the boundary drawn from one to the other should be submitted and determined without restriction in the light of the Loubet Award as well as in the light of all the allegations, contentions, evidence, and arguments submitted by both parties. That admitting, as all must do, a moral obligation flowing from the Loubet Award, the question submitted by this Government to the Panama Government is whether, considering the long practical deadlock of this controversy and the past unyielding attitude of both Governments, it is not now most important and indeed necessary to dwell upon and emphasize the moral and practical importance of peace and good*

neighborhood and the amicable settlement of a historic controversy which has been, and this Government feels will evidently continue to be, rendered impossible in case the acceptance of the Loubet Award be insisted upon."

In accord with these views, the following words are to be found in the memorandum presented by the Department of State, on the 1st of March, 1910 (Doc. No. 471), to the Ministers of Costa Rica and Panama, as a basis for the arbitration treaty:

*"The Secretary of State is well aware of the desires of Costa Rica, that the proposed arbitration shall be as broad as possible. He is equally sensible of the considerations which impel the Government of Panama to insist upon the Loubet Award as a basis for the definitive determination of the boundary; * * * the Secretary of State has arrived at a theory which, in his judgment, should form a basis substantially satisfactory and entirely considerate of the respective contentions. The Secretary of State, therefore, suggests that the compromise stipulate the acceptance of the line to the extent above mentioned, as free from doubt, and continuing, state the question to be arbitrated as the following. What is the boundary between the Republics of Costa Rica and Panama under and most in accordance with the true interpretation and correct intention of the Loubet Award, in the light of all the historical, geographical, topographical and other facts and circumstances surrounding it, as well as under the established principles of international law."*

This formula, proposed by Secretary Knox, and the formula finally incorporated into the treaty, were expressly declared by the parties, at the conference above mentioned, to be absolutely equivalent, or identical, with no other difference than that resulting from their editing.

In view of the foregoing, it is not difficult to understand the extent of the *differences* that are to be adjusted

by the unappealable decision of the Honorable the Chief Justice of the United States. These differences may be concentrated, reduced and unified into a *single fundamental difference* and that is: what is the boundary between the territories of the Republics of Costa Rica and Panama? It is that boundary which, in Article VII of the Treaty of Washington, is thus invoked to put an end to the controversy:

“The boundary line between the two Republics as *finally fixed* by the Arbitrator shall be deemed the true line, and his determination of the same shall be final, conclusive, and without appeal.”

The line thus referred to is the line which will be established and declared by the Arbitrator after taking into account all the facts, circumstances and considerations which may have any bearing on the case, including the limitation of the Loubet Award set forth in the note of His Excellency Monsieur Delcassé, dated the 23d of November, 1900, according to which the frontier *must be* traced within the limits of the territory in dispute as determined upon in the Convention of Paris of 1886. That boundary is the one which the Arbitrator, in his wisdom will find to be most in accordance with the *true interpretation* and *correct intention* of the Award, according to the said facts, circumstances and considerations, and to the principle that the frontier must not trespass on the limits of the territory in dispute. Also certain data, provided for by the arbitration treaty (Article II), shall be used to elucidate the decision of the Honorable the Chief Justice of the United States; which data the Commission of Engineers, created by the treaty, has submitted to him as a result of the exercise of the right reserved by the parties to inject into the record geograph-

ical elements that will show the character and condition of the territory involved in the controversy.

It is clear that, if the decision handed down at Rambouillet on the 11th of September, 1900, encroached upon the limits of the area not in dispute, by running the frontier line through territories excluded therefrom and belonging exclusively to Costa Rica, as maintained by that republic, the duty devolves upon the Honorable Chief Justice to rectify the frontier line in such wise that, without trespassing on the undisputed territory, it may be adjusted to all facts, circumstances and considerations that may have a bearing upon its just and correct determination. Such a line must of necessity be a new line, not a mere reviving or clarification of an old and obscure line; and in order that it may be fixed it becomes necessary to make an exhaustive study of the controversy, as though it had never been decided. For this reason Costa Rica's counsel have found themselves obliged to treat the subject in all its aspects in the light as well of Spanish colonial law as of international law, into the domain of which the controversy entered after the colonies converted themselves into independent states.

The Honorable Chief Justice will have to take into account above all, the powers conferred on President Loubet in connection with the question submitted to him, not only in order now to interpret his Award, in accordance with the conditions stipulated in the convention, but to take inspiration from those powers, in the event that he finds himself obliged to reform or rectify that Award.

(2) POWERS CONFIDED TO PRESIDENT LOUBET.

The arbitration of President Loubet was governed by the Convention of Bogotá of 1896 by which it was instituted. In the preamble of that convention it is asserted

that it responded to the desire "to put an end to the pending question of boundaries and reach a definitive delimitation of territory;" and in its 5th Article it confirmed Article 1 of the Arbitral Convention of 1880, and Articles 2 and 3 of the Additional Convention of 1886.

By Article 1 of the Convention of 1880, the Republic of Costa Rica and the United States of Colombia engaged in an arbitration of the boundary question outstanding between them, and the designation of a line that was to *divide for all time and with entire clearness the territory of the former from the territory of the latter*, each to remain in full, quiet and peaceful possession of all the land left to its side by the line referred to, which land was not to be burdened with any *charge or obligation* whatever in favor of the other. It is to be noted that the preamble of that convention reiterates the purpose to maintain and strengthen the friendly relations (*then disturbed only by the question of boundaries*) "invoked in articles 7 and 8 of the Convention of March 15, 1825, between Central America and Colombia."

Article 2 of the Additional Convention of 1886 is expressed as follows:

"The territorial boundary which the Republic of Costa Rica claims, on the Atlantic side, reaches as far as the Island of the *Escudo de Veragua* and River *Chiriquí* (Calobébora), inclusive; and on the Pacific side as far as the River *Chiriquí Viejo*, inclusive, to the east of *Punta Burica*. The territorial boundary which the United States of Colombia claims reaches, on the Atlantic side, as far as Cape Gracías a Dios, inclusive; and on the Pacific side, as far as the mouth of the River *Golfito*, in the Gulf of *Dulce*."

Article 3 provides that the arbitral decision must confine itself "to the territory *disputed* which lies *within*

the extreme limits already stated," and that it could not affect the rights of a third party, stranger to the arbitration. It is also to be noted that in the second paragraph of the preamble of that convention, by which the arbitration is committed into the hands of the Spanish Government, it is asserted that "not only because the greater part of the original documents for deciding with certainty and full knowledge of the matter the pending question of boundaries are to be found in the archives of Spain, but also because there are to be found there a sufficient number of persons especially devoted to investigations concerning America."

So that, by virtue of those texts, the Award of President Loubet should have been a definitive decision of the boundary question that would have brought to an end the differences between the two republics by designating the divisional line in its full extent for all time and with entire clearness, and *confining itself to the disputed territory* within the extreme limits established. From the same texts followed the precept, accepted by mutual agreement, that the question must be decided in conformity with the Treaty of Bogotá of 1825 and the documents of the period of Spain's domination.

Hence, the query arises: Does President Loubet's Award conform to those texts which restricted his powers? If not, it must be believed that this happened by error or lack of data, but not on account of the absence of intention to act in accord with those texts.

II. CRITERION OF THE ARBITRATOR FOR DETERMINING THIS QUESTION.

(1) CRITERION DEDUCED FROM THE DIFFICULTIES OF THE CASE AND RESULTS OF THE MEDIATION BY THE UNITED STATES.

Various efforts were made by the United States to arrive at a solution, by mutual agreement between the Republics of Costa Rica and Panama, in respect of the Loubet Award, for while the former interposed the preliminary question as to its validity, the latter insisted that the case resolved itself into a simple matter of interpretation. The Government of the United States, in its turn, declared, on the 1st of February, 1910 (Doc. No. 468), that the question at issue *was not confined to a mere interpretation* and that, for its solution, the point that should be submitted to arbitration was that which related to the *respective claims of the two republics concerning the true frontier line*.

Finally, the Secretary of State, the Honorable Philander C. Knox, succeeded in bringing the parties to an understanding by means of his memorandum of March 1, 1910 (Doc. No. 471), in which the issue was stated in the following terms:

“Costa Rica desires that the proposed arbitration may be *as full and extensive as possible* and Panama insists that the Loubet Award should be the basis adopted for the definitive determination of the frontier.”

And, after suggesting by way of compromise that thenceforth the part of the line on which they were agreed be accepted, he proposed, as a conciliatory formula, the following question for submission to arbitration:

"What is the boundary between the Republics of Costa Rica and Panama under and most in accordance with the true interpretation and correct intention of the Loubet Award, in the light of all the historical, geographical, topographical and other facts and circumstances surrounding it, as well as under the established principles of international law."

(2) CRITERION EXPRESSLY ESTABLISHED BY THE WASHINGTON CONVENTION.

When the Representatives of Costa Rica and Panama met to draw up the treaty in accordance with the memorandum of the Secretary of State, Señor Porras, the Minister Plenipotentiary of Panama, made it known that he accepted the formula suggested by Mr. Knox, but that, *to avoid redundancy*, he proposed that the words "in view of all the historical, geographical, topographical, and other facts and circumstances surrounding it, and in the light of the principles of International Law" *be changed to the more comprehensive clause: "taking into account all the facts, circumstances and considerations that may have a bearing upon the case."* The Minister Plenipotentiary of Costa Rica, Señor Anderson, made no objection to this change in the draft, *it being his understanding that the propositions were identical; but he insisted upon the condition that there be added to the amendment the "reference to the limitation of the Loubet Award stated in Monsieur Delcassé's note to the Costa Rican Minister, Señor Peralta, of the 23d of November, 1900."* It was thus agreed, both representatives understanding that the formula in the treaty was equivalent to that proposed by the Secretary of State.

III. RESULTANT POWERS OF THE ARBITRATOR.

(I) DEFINITIVE SOLUTION OF THE BOUNDARY QUESTION ON THE BASIS OF THE LOUBET AWARD.

From the foregoing the following may be deduced:

Article I of the Treaty of Washington clearly establishes the nature and purpose of the question propounded as a result of the compromise and the extent of the powers conferred on the Arbitrator.

The question, before everything and above everything, is a question of boundaries, and the ultimate object of the contracting parties is to arrive at the establishment of a clear and incontrovertible line that will divide their territories for all time.

For the definitive establishment of that line, a certain instrument is invoked to serve as a basis therefor, to-wit, the Loubet Award; but as that document has been, and is, bound to be susceptible of diverse and contradictory interpretations, it is necessary to begin by making clear its correct interpretation and fix its true intention.

It has not been the desire of the parties that the Arbitrator should be a mere, humble interpreter, like the ordinary judge, to whom for example is submitted a contract drafted with more or less ambiguity and imperfection, and who, with the paper before him, is called upon to decide what may be its true meaning; on the contrary the Arbitrator in this proceeding has a broader and loftier mission. He is called upon to interpret the Award with full knowledge of the cause; he is to take into account "*all the facts, circumstances and considerations*" that may and should have any bearing upon its determination, facts not only of an historical, geographical, or topographi-

cal character, but facts of any other nature; for in the term "*all the facts*" none are excluded, whatever may be their nature. He must take into account also "*all the circumstances*," as well those that preceded the interpreted Award as those that accompanied and followed it—excluding none, of whatever kind they may be, provided they are capable of influencing the final determination, for the term "all" can bear no restriction. And, finally, the Arbitrator must also take into account "all the considerations" that may be susceptible of influencing the case, whether moral, juridical, or of any other nature, for from the term "all" not even the considerations of equity and convenience can be eliminated.

(2) POSSIBILITY OF EXPLAINING, CORRECTING AND CARRYING OUT THAT AWARD.

And especially is the Arbitrator empowered to take into proper account the limitation in the Award referred to in Minister Delcassé's note to Señor Peralta, dated the 23d of November, 1900, according to which His Excellency the President of the French Republic solemnly declares that the frontier line should be traced within the boundaries of the territory in dispute, as ordained by the Convention of 1886; and, even without that authority, such course is prescribed by incontrovertible principles of international law.

To-day, therefore, the case is not one involving mere interpretation, but, in due course, it may possibly come to involve a limitation, or rather a partial reforming, of the Award to purge it of a certain defect resulting from the overstepping of power with which, in the opinion of one of the parties, the Award is rendered imperfect.

If that defect does in fact exist, even though the decision be clear literally, it will be necessary to retire the

frontier so that it will not trespass on the boundaries of the territory not in dispute; and in that event, and in order that the rectification may be just and correct, the Arbitrator can, and should, formulate *new* dispositions that will give to each of the parties, in satisfaction of its right, that which justly belongs to it.

For the accomplishment of all this the arbitration treaty prescribes rules and procedure that will facilitate the broadest study of the questions at issue, so that the decision may be final and may be executed without complications.

By the admission of the French Arbitrator, the frontier established by him, for lack of necessary geographical data, could only be determined by general indications, and these he did not think it would be prudent to trace on a map. Those general indications, considering the topography of the land, are incompatible with the dispositions of the Award, partly because of the absence of mountain ranges adopted by the Award to form the frontier, and partly because, if the text of the Award is followed literally, there is no question but that territories not in dispute will be invaded. The new Arbitrator, with the exact geographical data which he already has before him, in accordance with the requisites of the arbitration treaty, will point out the direction which the frontier must follow, and he will be enabled to fix with absolute precision the physical points through which the line is to run.

The French Arbitrator was convinced that, to concrete or particularize the general indications he gave as the basis of the frontier, in order that the line might be physically translated to the land, a later undertaking would be necessary; and since, at the proper time, he must have been persuaded, in view of Costa Rica's respectful observations,

that those general indications, on being carried into practical effect, must have encroached upon territories not comprised within the area submitted to his jurisdiction, he besought the parties to come to an agreement on those points under the inspiration of the spirit of conciliation and good understanding which had theretofore presided over their contentions. And now, all the direct efforts made by them to reach the desired result having come to naught, the new arbitrator is charged by the Treaty of Washington to fulfil that task; wherefore his mission does not merely embrace the duty of interpreting the Loubet Award, but the twofold of making that interpretation and of limiting the Award.

By reason of the vagueness and lack of certainty in the disposition of the Award of 1900, and because, on being interpreted literally, that instrument clearly invades undisputed territories belonging to Costa Rica—which facts must of necessity rob the decision of its virtue—the question of boundaries in reality remained open and subject to future adjustments between the parties in order to determine its meaning and purge the decision of its very patent defects. The Treaty of Washington, in view of the condition of things above outlined, proceeded on the theory that the cause was in reality still open—at least in part, that is, as to the limitation of the Award—and was, in any event, in need of clarification; and charged the Arbitrator with the duty of deciding it one way or the other, finally and conclusively, to the end that the frontier may be definitively marked out on the ground.

The tracing of the frontier comprised between Punta Burica, its terminal on the Pacific, and a point above Cerro Pando at the 9th degree of north latitude in the Central Cordillera, is not involved in any way in the present cause.

As to that part of the frontier line the parties have an absolute understanding and are in full accord; so that the scope of the present controversy is limited to the region on the Atlantic side from the point above mentioned, near Cerro Pando, to the terminal of the frontier in the Atlantic.

From the foregoing it will be seen that the criterion which must serve as the guide for the arbitrator in his determination of the case, is amply broad, particularly where he is called upon to make, *de novo*, dispositions that do not constitute a mere interpretation of the existing Award, but look to the limitation or restriction of its operation to the area in dispute. There is no conceivable fact, circumstance or consideration, whatever may be its nature, that cannot be called into service to make possible a just decision; and in this connection, it is obvious that each of the parties is authorized, in the defense of its rights, to avail itself of all legitimate resources and to resort to all pertinent allegations of fact from the beginning to the end of the Spanish domination in Costa Rica and Panama, and from the proclamation of the independence of both colonies down to the present day.

And the judgment which the Honorable Arbitrator may be pleased to render, whatever it may be, must be accepted by the parties as though there had never been a decision of the frontier litigation—as though this were the first and only judgment upon a question which, as a matter of fact, has been agitated for nearly a century by the two nations interested, and has occupied, intermittently, the attention of several important and friendly governments (notably those of the French Republic and the United States); that judgment will be the last word in this matter and will fix for all time the frontier now in question.

When, during the progress of the mediator's efforts to bring about an arbitration, Panama denied that President Loubet's Award could be annulled, she took the position that such annulment was incompatible with her national constitution, which provides that—

“The territory of the Republic is composed of all that out of which, on the 27th of July, 1855, the State of Panama was formed, by virtue of the additional act of the Granada Constitution, and transformed with its islands, in 1886, into the Department of Panama; and the territory,*continental and insular, adjudicated to the Republic of Colombia by the Award rendered on the 11th of September, 1900, by the President of the Republic of France.”

But it is clear that Panama inherited this Award with its own peculiar conditions that were involved in the discussion between Costa Rica and Colombia; and, furthermore, we are now considering, not the annulment of that Award, but an arbitration that has for its purpose the fixing of the boundaries of the territories inherited. The Secretary of State, while acting as mediator, and also in his memorandum, took into account the circumstances that moved the Government of Panama to maintain that the Loubet Award was the basis to be adopted for the definitive adjustment of the frontier; and, in fact, it was adopted as such basis by the Treaty of Washington, which was approved by the Panamanian Congress, both parties beginning by accepting it textually in so far as it related to the designation of a part of the frontier line that was “clear and indisputable.” To correct its errors when its own author confesses the deficiency of his work—even to the extent of suggesting the possibility that he had made a mistake—is, as has been shown, within the power

of the Chief Justice; and this would not be incompatible with the Panamanian Constitution, any more than the sentence that rectifies the boundary line of inherited property would be incompatible with the will of the testator.

The Government of Panama itself acknowledged the possibility that the present arbitrator would have to correct the errors in the Loubet Award, when in its note of February 20, 1910 (Doc. No. 470), to the Secretary of State, as mediator, it proposed that a survey and examination be made of the line and the territory through which it runs, by engineers commissioned for that purpose, on account of "the conditions which compelled President Loubet to describe the boundary in terms so general as to have given rise to the differences which followed it." Because, if from this survey and examination errors are shown in the Award, it is manifest that Panama is in the position of having agreed that they should be corrected, without a thought that thereby her constitution would be violated.

It must be also taken into consideration that President Loubet, according to the note of Minister Delcassé, as a last resort, evaded the duty with which he had been charged, to designate the divisional line in a clear and definitive manner, and committed the final solution of the boundary question to the spirit of conciliation and good understanding of the two governments, which, in their turn, have passed it along to the present arbitrator, the Honorable the Chief Justice of the United States.

CHAPTER IV.

MAXIMUM LIMIT OF THE TERRITORY IN DISPUTE.

I. THE DISPUTED TERRITORY ACCORDING TO THE TEXTS OF THE ARBITRAL AGREEMENTS.

- (1) THE CONVENTION OF WASHINGTON AND NOTE OF MINISTER DELCASSÉ.
- (2) ARTICLES 2 AND 3 OF THE CONVENTION OF 1886.
- (3) THEIR ABSTRACT GEOMETRICAL INTERPRETATION.

II. INTERPRETATION FOUNDED UPON ACTUAL FACTS AND THE CONSENT OF THE PARTIES.

- (1) THE TERRITORY IN DISPUTE DOWN TO 1880.
- (2) THE TERRITORY IN DISPUTE AT THE TIME OF SIGNING THE CONVENTION OF 1880.

III. TERRITORIAL CLAIMS FORMULATED IN THE ARBITRAL PROCEEDINGS; THE TWO STRAIGHT COURSES OF THE SILVELA LINE.

I. THE DISPUTED TERRITORY ACCORDING TO THE TEXTS OF THE ARBITRAL AGREEMENTS.

- (1) THE CONVENTION OF WASHINGTON AND NOTE OF MINISTER DELCASSÉ.

According to the second paragraph of Article 1 of the Convention of Washington, the Arbitrator must take into account:

“the *limitation* of the Loubet Award expressed in the note of His Excellency Monsieur Delcassé, Minister of Foreign Affairs of France, to His Excellency Señor

Peralta, Minister of Costa Rica at Paris, of November 23, 1900, that this boundary line must be drawn within the confines of the *territory in dispute*, as determined by the Convention of Paris between the Republic of Costa Rica and the Republic of Colombia of January 20, 1886."

That note acknowledged the possibility that the Award may be in error as a result of the lack of geographical data, and declared it to be beyond doubt that it is limited by the rules prescribed for the arbitration. Minister Delcassé replied therein to Señor Peralta in these words:

"But there is no doubt, as you have observed, that in conformity with the terms of Articles 2 and 3 of the Convention of Paris of January 20, 1886, this frontier line must be traced within the limits of the territory in dispute, as they are found to be from the text of said Articles."

(2) ARTICLES 2 AND 3 OF THE CONVENTION OF 1886.

The Honorable Chief Justice, must then, take into consideration the provision of the 1886 convention respecting the boundaries of the territory in dispute, as much to enable him duly to appreciate the Award of President Loubet, as to avoid overstepping those boundaries in definitively fixing the frontier line.

The boundary claimed by Costa Rica is clear, since it is established by two *lines* traced by the *Calobébora* and *Chiriquí Viejo* Rivers on the Atlantic and Pacific sides, respectively, only the intermediate section remaining to be fixed; and this therefore, it is understood must be a line that connects the sources of those rivers along the Main Cordillera—a line that harmonizes with the facts of nature, history and law.

The boundary claimed by Colombia, however, is not indicated by lines, but only by two extreme points; one on the Atlantic—Cape Gracias a Dios—and the other on the Pacific—the *mouth* of the *Golfito* River. As two points in space can be connected by a straight line and also by an infinite number of curved or broken lines, the claim of Colombia must be identified with some particular one of an infinite number of interpretations.

(3) THEIR ABSTRACT GEOMETRICAL INTERPRETATION.

If Article 3 of the treaty is disregarded the only one of all these interpretations which could reasonably be taken would be *the straight line*. First, because the *only* line that is geometrically determined by two points is the straight line; second, because when it is desired to depart from the straight line—which is the current conception of the connection between two points—indication is made as to what other line is to be taken, its description is given, and the most salient points of the component curves of sections are indicated; and third, because it is not to be supposed that Costa Rica would have accepted an arbitration in which, by means of a curved or broken line between the mouth of the *Golfito* River and Cape Gracias a Dios, she would be left without a capital and almost without territory.

If a straight line is drawn between the mouth of the *Golfito* River and Cape Gracias a Dios, it will be seen that the Award of President Loubet, as Panama understands it, *has departed from such straight line* and made the frontier line penetrate, in the form of an angle or wedge, almost as far as Cartago, the ancient capital of Costa Rica and not far from San José, her present capital.

That straight line cuts through the Main Cordillera to the west of Pico Blanco, at $9^{\circ} 13' 30''$ north latitude,

83° 4' west of Greenwich, and, inevitably also, it would have to cut across the courses of the Lari, Coén and Telire or Tarire Rivers, dividing the central valley of Talamanca into two great sections: one lying on the right of the line—that is, to the *east*—and thus taking on the character of *disputed territory*; and the other, to the left of the line—that is, to the *west*—which would thereby constitute part of the *absolutely indisputed* area of Costa Rica. Therefore, to adjudicate to Colombia as, according to the Panamanian interpretation, the Award of September 11, 1900, did adjudicate, *the central valley of Talamanca in its entirety, together with the Lari, Coén and Telire or Tarire Rivers, in their entirety*; to adjudicate, besides, a considerable expanse of the Main Cordillera, to the northwest of Pico Blanco—a point near and to the left of which passes the straight Golfito—Gracias a Dios line; and to concede, as that Award seems to concede, to Colombia, according to the Panamanian interpretation, the entire Valley of the Tarire from its mouth to its source—a valley which the said straight line likewise would divide into two parts, one, *litigated territory*, and the other, *indisputable territory* belonging to Costa Rica—it is clear, from all the evidence, that no respect was given to the said Golfito—Gracias a Dios line, which was intended, on the hypothesis mentioned, to mark out and distinguish the *territory submitted* and the *territory not submitted* to the hazard of litigation. For although there were involved in the proceeding *only a part* of the valleys indicated, *only a part* of the Main Cordillera and *only a part* of the said rivers, yet the *totality* of the cordillera, rivers and valleys mentioned was made the subject of judgment and award. That will be legitimate and correct on the day on which a part becomes equal to *the whole*—or the *limited* powers of an arbitrator convert themselves into *absolute* powers; not before.

It must be observed that Costa Rica does not accept as correct the foregoing interpretation, of an abstract geometrical line connecting the two extremes—the mouth of the Golfito River and Cape Gracias a Dios, because it disregards the limitations imposed by Article 3 of the treaty of 1886. What is here sought to be shown is that, even on the supposition that that straight line is admissible, the Loubet Award did not respect it.

Returning to Articles 2 and 3 of the 1886 Convention: in speaking concretely of the scope of the Award, it does not refer to all the territory *comprised* between those limits as interwoven with the idea of the rights of a third party, but only to territory *in dispute*; it says that “the arbitral award must be confined to the *disputed* territory which lies within the extreme limits already stated.” It remains to be seen what in reality was the *disputed* territory, taking into consideration the historical antecedents and the terms in which the question was stated in the text of the 1886 Convention.

II. INTERPRETATION BASED ON THE REAL FACTS AND THE CONSENT OF THE PARTIES.

(I) TERRITORY IN DISPUTE DOWN TO 1880.

From the time of the Treaty of Bogotá, of March 15, 1825, which recognized the colonial *uti possidetis*, down to 1836, Colombia did not dispute Costa Rica's title to any territory whatsoever; the latter retained the divisional line established by her fundamental law of January 21, 1825, which was in force when that treaty was signed, and that line ran from the *Escudo de Veragua* and *Calobébora* River to the mouth of the *Chiriquí Viejo*.

The dispute began with the violent occupation of the island of Colón and the formation by Colombia of the Territory of Bocas del Toro, in 1836 or 1837—acts against which Costa Rica protested on several occasions, notably in the treaty she entered into with the State of the Isthmus in Article 4 of which she reserved the right to claim restitution of her possessions in Bocas del Toro, wrongfully occupied by New Granada.

According to the usurpatory decree of 1836 the said territory had for its boundaries: on the north, the Atlantic coast that ran from Concepción River to Culebras (that is, the Changuinola) River; on the south, the summit of the Chiriquí Cordillera as far as the site of Guayabo, and, on the northwest, the frontier line which toward that point separated the Republic of New Granada from that of Central America. The rest of the line between the site of Guayabo and the point of departure, or the mouth of the Concepción River, is not material to this controversy.

Accompanying this Argument is Diagram B, showing the extent of territory enclosed within the foregoing demarcation. It will be observed that the north and south lines are natural and unchangeable—the Atlantic littoral and the Chiriquí Cordillera. The point of departure of the demarcation is fixed and well known; this is the Concepción River whose mouth, according to Señor Valdés' map of Panama, is at $8^{\circ} 52'$ north latitude and $80^{\circ} 57'$ west of Greenwich. As to the mouth of the Culebras there could be some discussion; but, by way of hypothesis, assuming this to be either the Changuinola or the Sixaola, and taking its mouth as the center of a circumference with the zero point in the meridian of either of the rivers mentioned, as indicated on the diagram, the essential direction of the line, which, starting from the river mouth must end in the cordil-

lera, will necessarily follow the radius corresponding to the 225th degree, that is to say, in a direction S. 45° W. This is one that marks the divisional line in the *north-west* of the geometrical figure which the decree of 1836 sought to give to the territory of Bocas del Toro. Whether the Changuinola River is included within the area circumscribed by the demarcation in question is doubtful, in view of the course given to that river on the map above mentioned; but it is beyond all possibility of doubt that if the Tarire, or Sixaola, is to be taken for the Culebras River, that river for nearly its entire length is clearly excluded from the area enclosed within the demarcation, as will be seen from the direction given to its course on the above cited map, which map conforms to the facts of geography. It must be borne in mind that, according to the decree of 1836, the Culebras River is not the boundary of the Bocas del Toro territory; its mouth only constitutes one of the extreme points of such boundary.

Account must also be taken of the fact that on the official map of the State of Panama, prepared in 1864 by Manuel Ponce de León and Manuel María Paz (Map XXXI), from data obtained from the Chorographical Commission and supplied by order of the General Government of Colombia, the rivers called *Sixaola* and *Culebras* are shown to be two distinct streams, as is the case also with the Punta Mona or Careta—a single geographical entity which is made to appear as two different points. But the course followed by each river is from south to north, with a slight inclination to the east, so that the straight line connecting the mouth of the supposititious Culebras and the Punta Burica runs almost north and south; and the same course is followed by the other straight line connecting the mouth of the Sixaola and Punta Burica, although with an inclination of a few minutes to the east.

It must also be taken into consideration that according to the official map referred to, not only the Culebras, but the Sixaola as well has its source in the summits of the Main Cordillera which separates the waters of the two oceans; with the peculiarity, however, that up to that point of origin, the first of those rivers runs from south to north and ends at a certain *Cordillera de las Cruces*, so named by the engineer Codazzi, and drawn on the Pacific slope to serve as the continuation of the frontier proposed by him, with a terminal in the Golfito River and its mouth in the Gulf of Dulce.

From the foregoing it becomes abundantly clear that at no time has Colombia contemplated the possibility of even claiming as her own, territory that would be left on the west side of a line drawn along the middle of the Golfito River's mouth, a line such as the one which, contrary to all law, and without the remotest relation to the antecedents of the controversy, was traced by Señor Silvela in his demand. Diagram A above referred to shows this scandalously usurpatory line; it runs *for its entire length* through territory which the followers of Codazzi (Señores León and Paz) left in blank, as territory indisputably belonging to Costa Rica.

Neither did Colombia cherish the idea of keeping all of the Atlantic coast of Costa Rica and Nicaragua when she attempted to revive the Royal order of San Lorenzo of 1803. She did not attempt this in the case of Nicaragua, for on different occasions official declarations were made to the effect that Colombia was disposed to renounce the sovereignty she claimed over that coast; in fact, she never seriously or effectively put forth such pretensions against Nicaragua. Nor in the case of Costa Rica did Colombia attempt to deprive her neighbor on the north of her access

to the Atlantic ocean. Colombia's concern was centered on legitimizing the occupation made by her, in 1837, of the Bocas del Toro territory, and in securing a good anchorage in the Gulf of Dulce. Everything else was to her of secondary interest, as Señor Fernández Madrid expressed it. According to his counsel the Royal order of 1803 was used as a mere weapon in a diplomatic fencing.

Until 1869 and 1870 Costa Rica continued in the peaceful exercise of jurisdiction over the entire Sixaola region and the zone between this river and the Changuinola, and over the whole of the Gulf of Dulce and the greater part of the Burica Peninsula. But in those years jurisdictional conflicts arose out of the acts of Costa Rica authorities in the region between the Sixaola and the Changuinola and the interference of Colombian authorities in Burica. The Treaty of 1873 (Montúfar-Correoso) put an end to these conflicts, and fixed a frontier line from Punta Burica to the mouth of the Bananos River that empties into the Almirante Bay; this treaty, however, was not ratified by either party. After the disputes on the Atlantic side subsided, the conflict reopened, in 1879, as a result of the leasing, by the *cabildo* of Alanje in Panama, of certain coconut groves in Burica; and so spirited did it become that war was on the point of breaking out; this was, however, averted by the arbitration Convention of 1880.

(2) THE TERRITORY IN DISPUTE AT THE TIME OF SIGNING
THE CONVENTION OF 1880.

The arbitration Convention of December 25, 1880, was entered into by Colombia under authority granted by the Senate of Plenipotentiaries of that republic in accordance with the Conclusions it had adopted on the 13th of July of the same year, after Costa Rica had consented

to maintain *in the Burica region* the *status quo* prior to the events of 1879.

In its First Conclusion the Senate affirmed that Colombia had, under titles emanating from the Spanish Government, a perfect right of dominion to, and was in possession of, the territory which extends toward the north, between the Atlantic and Pacific oceans, as far as the following line: from the mouth of the *Culebras* River on the Atlantic, upstream to its source; thence a line along the crest of the ridge of *Las Cruces* to the origin of the *Golfo* River; thence along the natural course of the latter river to its outlet at the Gulf of Dulce in the Pacific.

A diagram is presented herewith (Diagram C) to facilitate an understanding of the direction taken by the line just described. The diagram is based on the chorographical chart of the State of Panama prepared by Señores Ponce de León and Paz in 1864. As will be noted, the line laid down by the Colombian Senate of Plenipotentiaries, and adopted by the Ministry of Foreign Relations of that government in the instructions given to the diplomatic agent it sent to San José, starts at the mouth of the river called *Culebras* and follows the upper waters of that river to its source. The general direction of that part of the line is *north and south*, and the territory therein indicated by the name "Boundary with Costa Rica," and left blank, is respected. The rivers affluent to the *Culebras* on the left (numbering not less than eight), according to the map, are *indisputably Costa Rican rivers*; and the longitudinal valley is clearly divided into two sections: *the right hand, or eastern zone, belonging to Colombia*; and *the left hand, or western, to Costa Rica*. The frontier line, after following the *Culebras* River to its end, continues along the summit of the range or *Cordillera de las Cruces*, which runs

in a north and south direction, with a slight inclination to the west, until it comes to the source of the Golfito River, the course of which, from *northeast to southwest*, follows the demarcation to its mouth in the Gulf of Dulce. All of the territory to the west of Las Cruces range and of the Golfito River is, according to the demarcation made by the Colombian Senate of Plenipotentiaries, *exclusively Costa Rican territory*.

In the Second Conclusion of that body it was declared that "Colombia held titles, emanating from the King of Spain, which prove her right to the Atlantic littoral comprised between the mouth of the *Culebras* River and *Cape Gracias a Dios*." What was that right? It is quite apparent that the Conclusion referred to the supposititious right to the *Mosquito Coast*. That is the way it is construed by the Secretary of Foreign Relations of Colombia, Señor Rico, in his note of April 20, 1880, and that is the way the Costa Rican Minister of Foreign Relations understood it in his reply, denying the Royal order of San Lorenzo of 1803.

It should be noted that the Second Conclusion of the Colombian Senate was not included in the statement of President Núñez, nor was a word said about it by Dr. Holguín in the negotiations with which he was entrusted. The controversy to which that Conclusion referred had subsided for the moment; and as that controversy was also in eclipse at the time of entering into the Treaty of 1880, that compact included among its stipulations (as shown conclusively by its text) only the question of boundaries, properly so-called; that is, the demarcation of the frontier between the ancient Provinces of Costa Rica and Veragua.

The Conclusions of the Colombian Senate of Plenipotentiaries put forth the extreme pretensions of that republic

prior to the arbitration and make it clear that the line which was to connect the mouth of the Golfito River with Cape Gracias a Dios comprised two boundaries involving two different territories and *two distinct questions*. One of these questions—that relating to the boundaries between Costa Rica and Colombia and involving the extreme points of the mouth of the Golfito River and Gulf of Dulce, and the Culebras River on the Atlantic side—was compromised; the other question, which related to the sovereignty over the Atlantic littoral, covered by that part of the Mosquito Coast below Cape Gracias a Dios, had not been the subject of the original compact, and as no formal claim for the possession of that territory had ever been presented by Colombia to Costa Rica it was not strictly speaking territory in dispute between the two Governments.

III. TERRITORIAL CLAIMS FORMULATED IN THE ARBITRAL PROCEEDING; THE TWO STRAIGHT COURSES OF THE SILVELA LINE.

The territory asked for by Colombia in the arbitral proceeding before President Loubet constitutes an area vastly greater than that which was in dispute prior to the arbitration Treaties of 1880, 1886 and 1896, and even subsequently to those treaties down to the moment of Colombia's presentation to the Arbitrator, of Señor Silvela's memorandum which served as her claim. This pleading ignored absolutely the historical antecedents of the question, as well as the terms under which the question was submitted on entering into the three conventions referred to.

The line Señor Peralta asked for in that proceeding in the name of Costa Rica, varied in no particular from the line claimed by that republic from the inception of the

controversy down to the time of the Convention of 1896, for it was formed, throughout its entire course, by the two Chiriquí Rivers (that of the Atlantic side, known also as the Calobébora, or Culebras, and that of the Pacific side, which is distinguished by the addition of the appellation *Viejo*), and the Main Cordillera that divides the two oceans; the sole difference consisted in a detailed showing of the most salient points in that cordillera.

The line claimed in the arbitral proceeding by Señor Silvela, in the name of Colombia—which, as already seen, he maintained had its beginning in the mouth of the Golfito River, but which in reality started several miles to the west of that river mouth, that is, from *Punta Golfito*—cast itself boldly over the undisputed territory of Costa Rica, in violation of the positive inhibition of the Convention of 1886, and enormously widened the territory under claim in the litigation. That line is composed of two straight lines that form an angle. The first of these straight lines begins at *Punta Golfito* (to which is erroneously given the name of the mouth of the River Golfito) and, following the meridian of Punta Golfito, abandons the mouth and course of that river, which had marked the extreme pretensions of Colombia down to the moment of her demand, and crosses over the Main Cordillera, which it cuts transversely on its way (always along the meridian of Punta Golfito) to terminate in the bed of the Tarire or Telire River, approximately at the intersection of the parallel $9^{\circ} 33' N$. The second straight line starts at this last mentioned point and follows parallel to the Atlantic Coast of Costa Rica until it comes to an end at the confluence of the Sarapiquí with the River San Juan de Nicaragua.

The first straight line disregards the First Conclusion of the Colombian Senate of Plenipotentiaries that clearly determined the boundary claimed by Colombia, on the ground of her territorial rights in Veragua, which boundary Colombia was gradually advancing, from the western boundary of the ancient duchy toward the west, to the right bank of the Sixaola; that Conclusion also recognized as the boundary the Golfito River on the Pacific side.

It appears to have been proposed that the second straight line should correspond to the Second Conclusion of the Colombian Senate; but it does not adjust itself therewith, because in the text of that Conclusion the assertion is made that "Colombia has titles, which accredit its right, emanating from the King of Spain, to the *Atlantic littoral* embraced from the mouth of the River Culebras as far as Cape Gracias a Dios;" and the Silvela line, overstepping the boundaries of the *Atlantic littoral*, encroaches for a considerable distance upon the adjacent territory which belongs *unquestionably* to Costa Rica—a territory which, for the most part, fairly bristles with mountains of the loftiest altitude, and forms with the coast a rectangular zone 40 kilometers in breadth, which, instead of beginning at the mouth of the Culebras River and terminating at the mouth of the San Juan de Nicaragua—as required by the circumstance that only the *Atlantic littoral* was involved—resulted in being widened by the enormous distance over which, from the mouths of those rivers, was traced the line that closed the rectangle in the interior.

The first straight course of the Silvela line, aside from the error as to the point of departure, appears to have been inspired by the purely abstract geometrical interpretation of the text of the 1886 Convention, for the

meridian of the Golfito River and of Cape Gracias a Dios, happen to be the same, with but slight difference; but the second straight course of the line does not accord with that interpretation, for that meridian is departed from, *ad libitum*, in order to seek out, in an oblique direction, the meridian that runs through the mouth of the Sarapiquí.

The first straight course of the Silvela line should have conformed not with the Second Conclusion of the Colombian Senate of Plenipotentiaries, which had for its subject the question relating to the *Atlantic littoral*, but with the extreme boundary line designated by the Colombian Senate in its First Conclusion, which dealt with the question of territory from *sea to sea*; that is, the principle question under discussion between the parties, to wit, the boundary that began on the Pacific side at the mouth of the Golfito River, that followed the natural course of that river to its source, that continued along the crest of the Las Cruces range until it met the source of the Culebras River, and that came to an end following the course of that river down to its outlet in the Atlantic.

That line left unimpaired the quiet and peaceful possession exercised by Costa Rica in the interior valleys of Talamanca, a possession which Costa Rica has always enjoyed and which Colombia has never disturbed, but, on the contrary, has always heretofore respected as it appears from the emphatic First Conclusion of that republic's Senate of Plenipotentiaries, according to which Colombia was in possession of all the territory delimited in that Conclusion. As Costa Rica's legal, actual possession of those valleys was simultaneously an incontestable fact, the logical deduction is that the boundary of the two possessions must run midway between

them, so that the area which was the subject of the First Conclusion, above referred to, lies to the east, and to the west lies the area which in fact and truth is possessed by Costa Rica. This was the very boundary which, beginning at the mouth of the Golfito River and continuing along the Las Cruces range, came to an end on the Atlantic at the mouth of the Culebras River.

There was no point of contact between the line which has just been described bounding the Province of Veragua and the Costa Rican littoral on the Atlantic, which Colombia sought to bring into the Arbitration on the pretext that it was a part of the Mosquito Coast, except at the extreme northern part of that line at the mouth of the Culebras River. Throughout the remainder of its course the line separated lands in litigation between the two republics and lands belonging exclusively to Costa Rica and not involved in the litigation. And yet, as shown by Diagram D, the Silvela line was thrown right across those undisputed Costa Rican lands. It would have been the height of absurdity to claim for that line any degree of justification; to have made it at all possible, the Atlantic littoral, known as the Mosquito Coast, would have had to throw off its quality of immobility and translate itself from its location on the Atlantic slope, in the State of Nicaragua, to the *Pacific slope* on the opposite side of the continent, in the State of Costa Rica.

Nevertheless, from three points of view the Silvela line accords in some measure with the truth; (a) in that it demonstrates the unavoidable necessity of *cutting across* the course of the *Tarire* River at *some point*, for the greater part of that river, even admitting its partial synonymy with the Culebras, formed part of the *territory exempt* from the controversy. It is inconceivable,

nor can it be explained why, if the Tarire and Sixaola Rivers, throughout their entire course—from source to mouth—ran through disputed territory, the Colombian demand did not comprise those *entire streams* within the area the adjudication of which it sought from the Arbitrator; (b) in that the course of the frontier line was approximately straight and its direction from the Pacific to the Atlantic was more or less *south and north*, as taught by unvarying tradition and documents without number, and (c) in that said frontier line *did not* in any part of its course, *run longitudinally* along the edge of the Main Cordillera that stretches in a northwest-southeast direction—the cordillera which the Silvela line cuts *across diagonally*, always from south to north, to pass from the Pacific slope to the Atlantic. *For this reason the Colombian claim traces a straight line from south to north, cuts across the course of the Tarire, and does not follow along the edge of the Main Cordillera, confining itself to cutting across that range.*

The cause for the unusual direction given to the line in the Colombian demand is not far to seek. Colombia had always persistently maintained that the *Culebras River* was the boundary of her territory bordering on Costa Rica. She sought diligently for a document that might support this assumption, and, in 1896, Doctor Borda, specially charged by the Colombian government to make an exhaustive study of the question of boundaries with Costa Rica, filed a secret printed report of more than five hundred pages, in which he declares positively that *there does not exist, nor has there ever existed, a single document in support of the boundary mentioned—a boundary purely of the imagination.* This occurred just before the renewal of the Arbitration Conventions of 1880 and 1886; and since it was impossible to defend the boundary formed by the *Culebras River*,

which, even as late as the period from 1880 to 1894, had been defended by Colombia with a tenacity that nearly resulted in war, that republic found itself under the necessity of changing its tactics and *improvising another support*. The western boundary of Veragua then jumped from the Culebras River to Gracias a Dios, and, by a new system of logic called forth by the exigencies of the case, it became necessary to maintain that Costa Rica was no more than *a scrap of land between Honduras, Nicaragua and the Desaguadero*. This was the counsel given by Doctor Borda and it was followed to the letter, evincing the greatest determination to conceal the name of the skillful counsellor, and even more in concealing the book in which the remarkable report made its appearance; and Costa Rica never had knowledge of that report until the proceedings under the present arbitration were under way. And this in spite of the fact that that book had been written for the express purpose of influencing the persons *called upon to hear and decide* the boundary controversy, as appears from an official Colombian document.¹ The change of tactics was an expedient admirably adapted to meet the formidable difficulty of being unable to present before the Arbitrator any title which would give even the feeblest support to the violent occupation of Costa Rican territory as far as the right bank of the Sixaola in the coastal region. But that change of *tactics* had the disadvantage of not being legitimate, since the arbitration treaties were entered into on the theory that the claims of the parties were those that had been put forward and argued down to the 25th of December, 1880, and even later, down to the time of the Convention of 1896; whereas

¹Report by the Colombian Secretary of Foreign Relations submitted to the National Congress of 1890.

the questions that were the subject of the demand before the Arbitrator—presented by way of surprise—*were yet others*, never before advanced, much less discussed, and of such far-reaching effect that neither Costa Rica nor any other nation on earth would have submitted them to the hazard of arbitration; certainly not under the vague, incomplete and even equivocal form in which Colombia formulated her claims.

By the Treaty of 1880, then, the parties compromised on a question which will be called *A* and which, afterwards, by the Convention of 1886, it was attempted to state more specifically in the form which will be called *B*. Now, then; the demand of Costa Rica's opponent, instead of claiming *A*, claimed *Z*, availing itself of the form *B* calculated exclusively on the question *A* at the time of entering into the compromise.

It is obvious that such procedure was wrong and that the Award could cover only decisions germane to question *A*. There was an absolute lack of jurisdiction for deciding question *Z*.

In order to depart from the line traced by Señor Silvela, the Representative of Panama, in one of the conferences that preceded the present arbitration treaty, expressed the idea that it did not obligate either Colombia or Panama, for it could only be taken as a lawyer's argument. This objection is groundless, because, although Señor Silvela was only the attorney for Colombia before the Arbitrator, the memorandum he wrote, and which bears his name, was presented to the arbitral tribunal, not by Señor Silvela, but by the Representative of Colombia "specially accredited to Us" (says the Arbitrator) "for the present litigation." The memorandum referred to bore the character of *Colombia's demand or initial pleading in the litigation, as she her-*

self declared. And the line of demarcation asked for in that memorandum by Colombia in these words, "*D'après tout ce qui a été exposé, la République de Colombie rejette formellement les prétentions du Costa-Rica et réclame de la haute impartialité de l'arbitre que l'on fixe la ligne frontière comme suit * * **" (here follows the description of the line) was expressly approved and ratified in the volume entitled "*Résumé Chronologique des Titres Territoriaux de la République de Colombie*," pages 13 and 143. This volume also was presented to the Arbitrator by the special representative accredited to him by that republic.

That line, then, is essentially official and binding upon Colombia. But if it becomes necessary to deprive it of that character, Costa Rica would suffer no hardship, for in that case it would develop that there was no demand at all—nothing but mere allegations without formal prayers duly formulated; and in either case Colombia is bound under the treaties to the limitation of the territorial claim maintained by her up to the moment of entering into the treaty of arbitration—a claim clearly set forth in the Conclusions of the Colombian Senate and the frequently mentioned manifesto of President Núñez, and in a multitude of official documents.

Not for a single moment has Costa Rica conceded to the so-called Silvela line any degree of legality; on the contrary, she has always held it to be a new and unjustified invasion of, or trampling upon, her undisputed rights. If she has spoken of that line at all, it has been precisely for the purpose of calling attention to its illegality and to show up more clearly the defect of *ultra petita* existing in the Award. And when Señor Peralta became aware of the line in question, he could do no less than protest against the same, as he did in the terms that follow:

"Costa Rica maintains, and proves by a series of Royal acts, beginning with the Cédula of Emperor

Charles V, issued at Brussels on September 16, 1540, the legitimacy of her territorial claims and the perfect honesty with which she demands her legal frontiers—and no more than her legal frontiers—without allowing herself for a single moment, to drift into the fantasy of *plus petition*, in which the Republic of Colombia excels, as Costa Rica has seen with sorrow." (Peralta, *Réplique*, Sec. 9, p. 11.)

Señor Peralta protested against the fanciful Silvela line, as it was his duty to do; but he declined to discuss this strange and entirely groundless claim, refusing to take it seriously. He said to the Arbitrator:

"In default of valid titles, and only in default thereof, it is believed that the charts of D'Anville Vaugondy, Faden, Jefferys, and others, and the *Diccionario histórico-geográfico de América*, by Don Antonio de Alcedo constitute the main arguments of which the Colombian publicists, notably Señor Fernández Madrid, have made use in the effort to show that the boundaries of Colombia extend as far as the Culebras or Doraces River, and even as far as Punta Careta, for it is impossible to take seriously the NEW CLAIMS of Colombia as formulated in December, 1898, they being based on unjustifiable ignorance of both law and fact." (Peralta, *La Géographie Historique*, p. 3.)

And for those very reasons, when Señor Peralta presented his respectful observations to the Arbitrator urging him to interpret the Award in such way as not to prejudice the undisputed rights of Costa Rica, he made no mention of the so-called Silvela line, but referred to the arbitral agreement that would be violated by the Award if its literal interpretation were to prevail. So also, on every occasion in which it has been pertinent for the Government of Costa Rica to give expression to its views on the case, it has refrained from invoking that line in support of its cause, but has on the contrary insisted upon the line that legally determined the matter in controversy.

CHAPTER V.

QUESTIONS ARGUED IN THE LOUBET ARBITRATION AND THEIR SOLUTION.

I. QUESTION ARGUED IN THE ARBITRAL PROCEEDINGS.

- (1) QUESTION OF THE ATLANTIC ZONE.
- (2) QUESTION OF THE TERRITORIAL LIMIT BETWEEN THE TWO SEAS.

II. THE ARBITRAL SOLUTION.

- (1) SIGNIFICANCE OF THE AWARD IN RELATION TO THE QUESTIONS DISCUSSED.
 - (2) ULTRA PETITA AND INCONSISTENCIES OF THE AWARD RESPECTING THE TERRITORY IN DISPUTE.
 - (3) CRITERION AND INTENT OF PRESIDENT LOUBET IN THE DECISION OF THE ARBITRATION.
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I. QUESTION ARGUED IN THE ARBITRAL PROCEEDINGS.

- (1) QUESTION OF THE ATLANTIC ZONE.

The Colombian Senate of Plenipotentiaries, in its Conclusions of July 13, 1880 (Doc. No. 356), that preceded the arbitral convention of the same year, set forth very precisely the claim of that republic and clearly differentiated two questions: one, that relating to the territory com-

prised between the Atlantic and Pacific oceans, over which it claimed a perfect title of *dominion* and *possession*; and the other, that relating to the *Atlantic littoral*, as to which, not possession, but only a *right*, derived from the King of Spain, was claimed.

Señor Silvela merged the two questions when he formulated his demand in the arbitral proceeding, thereby attempting to justify jointly the two claims put forward by Colombia in one general argument to the effect that all of Costa Rica's should belong to Colombia or form a part of ancient Veragua, which had belonged to Tierra Firme and of which Colombia was the heir; and in another and special argument he set up the Royal order of San Lorenzo, of 1803, relating to the Mosquito Coast (Docs. Nos. 191, 192). Señor Silvela did not notice that by this second argument, the first was robbed of all its force, because if it had been true that the Royal order *segregated* the *Atlantic littoral* from the Province of Costa Rica in order to attach it to the jurisdiction of the Viceroyalty of New Granada, this in itself was proof positive that the rest of the province of Costa Rica did not form a part of that viceroyalty, but continued outside its jurisdiction.

However, the general historical argument—the weakness of which is quite apparent—tending to deny the existence of Costa Rica as a Spanish province, or to reduce it to the category of a small “scrap” detached from ancient Veragua, gave to Señor Silvela his opportunity to broaden the Atlantic zone at his pleasure; but that zone, according to the Royal order, could not be extended beyond the *coast*, and according to the Colombian Senate, comprised only the *littoral*.

In the arbitral proceeding Señor Peralta denied the efficacy of the Royal order of 1803, and advanced most con-

vincing arguments in support of his position, several of which had already been used by Señor Fernández Madrid and the Senate of New Granada in their opinions of 1852 and 1855 to persuade their government to desist from invoking that Royal order, on the ground that it was utterly valueless, except for the purpose of gaining an advantageous adjustment whereby Bocas del Toro and the half of the Gulf of Dulce might be secured.

(2) QUESTION OF THE TERRITORIAL LIMIT BETWEEN THE TWO SEAS.

The question of the interior boundary that was to divide the two republics from one sea to the other (the Pacific and the Atlantic) comprised in its turn two questions: that of *territoriality* and that of *delimitation*, as contemplated by the First Conclusion of the Colombian Senate in speaking of *territory* and a *line*. Comparing this line with that claimed by Costa Rica, it develops that that territory was the enormous area occupied by the so-called canton of Bocas del Toro that stretched as far as the Changuinola (Culebras) River, which was later extended by Colombia to the right bank of the Sixaola and that of the Yorquín, thus embracing a large part of the ancient Talamanca, and including the territory on the south from Chiriquí Viejo to the Golfito River in the Gulf of Dulce.

The Colombian Senate, in that First Conclusion, asserted that that Republic enjoyed, "under titles emanating from the Spanish Government and the *uti possidetis* of 1810, a perfect right of *dominion* to, and was in *possession* of," the territory referred to; and in the Third Conclusion claimed that "it had been in uninterrupted possession" thereof.

Counsel for Colombia in the arbitral proceeding maintained her right of dominion over said territory, basing

their argument on the dispositions of the colonial period, especially on the Royal *cédula* of 1537 (Doc. No. 13), for the purpose of showing, as it has just been indicated, that all the territory of Costa Rica should belong to Colombia, on the theory that it had been embraced in the Province of Veragua which had belonged in its entirety to the jurisdiction of Tierra Firme.

The burden of that argument was that, under the colonial *uti possidetis*, the state of Colombia had a perfect right to extend itself as far as it pleased over Costa Rican territory. Counsel did not concern themselves with proving *possession*; on the contrary, by their strenuous efforts to convert the *uti possidetis de jure* into the *uti possidetis de facto*, and to disregard the latter, they showed that Colombia had not such possession.

And as they did not concern themselves with proving possession, neither did they take the trouble to explain or justify the *divisional line* between the territories of Costa Rica and Colombia. What was the need of doing this, if according to their understanding both constituted properties belonging solely to Colombia by virtue of her colonial titles? On the same theory they left without explanation or justification the Colombian Senate's pretended line of dominion and possession (the Culebras River—Cordillera de las Cruces—Golfito River line), and the Punta Golfito line traced by Señor Silvela, under the name of the meridian of the Golfito River, as far as Sarapiquí.

The defense for Costa Rica, entrusted to Señor Peralta, took up for discussion the two questions of *territoriality* and *delimitation*. He punctured the *Veragua* equivocate by showing that out of that entity sprang three provinces: that which perpetuated the original name, and was coextensive with the ancient duchy, that of Costa Rica and

that of Taguzgalpa, the first coming under the jurisdiction of Tierra Firme which passed over into the Viceroyalty of New Granada, and the other two (that of Taguzgalpa having been transformed) depending upon the Viceroyalty of Mexico and the Captaincy-General of Guatemala down to the time of the independence. He explained and justified the divisional line asked for, which was the same that, from the time of the Royal cédula of 1573 (Doc. No. 62), had separated the Province of Costa Rica from the Province of Veragua and that existed between the two viceroyalties at the moment of emancipation, proving not only Costa Rica's rights to, but also her continuous possession of, the territory comprised between that line and Nicaragua. He declared that, even though the colonial *uti possidetis* can only be conceived in connection with the fact of possession, he experienced no embarrassment in accepting also the *uti possidetis de jure* put forward by Colombia, since Costa Rica was in fact and law in possession of that territory.

II. THE ARBITRAL SOLUTION.

(1) SIGNIFICANCE OF THE AWARD IN RELATION TO THE QUESTIONS DISCUSSED.

Of the two questions submitted and argued in the arbitration, it is evident that President Loubet resolved generally and implicitly that relating to the Atlantic Zone in favor of Costa Rica. No zone of any description appears in the Award, either a wide zone, like that of the Silvela line, or one reduced to a littoral like that specified in the Colombian Senate's Second Conclusion that strips Costa Rica of her territory bounding on the Atlantic, excepting a small part of the coast and a considerable area inland that is not coast

comprised between the mouth of the Sixaola River and Punta Mona, which, by an inexplicable anomaly is included within the bounds of Colombian territory. The Award itself expressly declares the islands, groups of islands, islets and banks situated in proximity to the coast and east and west of said Punta, to be the property of Costa Rica; and in speaking of the islands more distant from the continent and comprised *between the Mosquito Coast and the Isthmus of Panama*, it indicated that it did not refer the Mosquito Coast to the Costa Rican littoral.

The text of the Award says: "As to the islands more distant from the continent and included BETWEEN the *Coast of Mosquito* and the *Isthmus of Panama* * * * it is understood that the territory of those islands, without any exception, shall belong to the United States of Colombia." If the import of the preposition "between," is considered, it will be seen that it serves to denote the situation or state midway of two or more things or actions. Exactly *between* the Mosquito Coast and the Isthmus of Panama lies Costa' Rica's *Atlantic littoral*, as, conformably with the text of the Award itself, *between* the Atlantic and the Pacific, part of the frontier line interposed without touching the two oceans and at a distance from both; and another section of the line, without touching the rivers, ran *between* the Chiriquí Viejo and the affluents to the Gulf of Dulce.

The differentiation of (a) the "Mosquito Coast," (b) "Costa Rican littoral," and (c) "Isthmus of Panama," is made, therefore—and with a master hand—by the Award itself.

Costa Rica was not particularly beholden to President Loubet for the confirmation of her dominion over that Atlantic zone, for Spain, in extending to her recognition as an independent republic, by the Treaty of 1850, had

already done this for her by considering her territory to extend *from sea to sea*; the Republic of Colombia itself was convinced that the Royal order of 1803 was ineffective over the Mosquito Coast and that *it did not apply to Costa Rica*, because the latter's littoral on the Atlantic did not form a part of the Mosquito Coast, the terminal of which, on the south, reached at farthest only to Punta Gorda near the Rama River; and international diplomacy had already fixed the status of the Mosquito Coast by setting it exclusively upon Nicaragua—to which country in truth it pertained—and peremptorily rejecting the claims of Colombia to that coast. But it is important to have it well understood that the Award of President Loubet denied in its entirety Colombia's claim over that zone, with the exception of that part of the coast between Punta Mona and the Sixaola River and this was included not because it was part of the Mosquito Coast but because of a mistake of fact as to territorial possession and geographical conformation.

Respecting the question of the interior boundary between the two seas, it is necessary, as has been stated, to distinguish between the question of *territoriality* and that of *delimitation*. Taking the Award literally, what it says concerning the Sixaola River and the islands near the coast to the east and southeast of Punta Mona, and even those as far off as the Escudo de Veragua, is enough to warrant its interpretation in the sense of having adjudicated to Colombia that *immense territory* that belonged to Costa Rica from the line of the Escudo de Veragua and the Chiriquí, or true Culebras where Colombia by force installed her canton of Bocas del Toro which she proceeded to extend along the coastal region of Talamanca as far as the right bank of the Sixaola in its lower course. The Award also overstepped the Sixaola boundary and halted only at Punta Mona.

But the French Arbitrator resolved only in part the question of *delimitation*, confining himself to mere general indications which, for lack of exact geographical data, he did not even dare to mark out, on a map, according to the statement made in his name by his minister, Monsieur Delcassé; and because of that lack of data for the trial of the case, which prevented him from knowing the topographical reality or duly appreciating the historical facts connected therewith, he perforce had to commend himself to the good will of the litigants for the tracing of the frontier line which, according to the arbitral compact, he himself should have "definitively and clearly" designated.

(2) "ULTRA PETITA" AND INCONGRUITIES IN THE AWARD
RESPECTING THE TERRITORY IN DISPUTE.

Attention must be called at once to the manifest error made by the Award in enumerating the islands belonging "without a single exception" to Colombia, which included the islands of *Mangle Chico* and *Mangle Grande* that belong to the Republic of Nicaragua. And even though it is not necessary to insist upon this defect of excess of power in the Award—for the reason that in the Convention of 1886 it was expressly stipulated that the interests of third parties not involved in the arbitration would not be affected thereby, and that Nicaragua in due course entered her protest in that connection—nevertheless attention must be drawn to the fact that this error, which the Arbitrator sought in such haste to rectify, shows up most vividly the slighting manner in which the Award was prepared, and the lack not merely of "precise," but even "general" geographical data.

The Award of President Loubet also labors under the defect of *ultra petita*, whether it be considered in relation

to what Colombia petitioned for in the arbitral proceeding, overstepping the boundaries of the territory in dispute, or in relation to what was claimed by that country as its extreme boundary, in the Arbitral Convention of 1886, completed and explained by the antecedents of the controversy.

The line asked for by Señor Silvela in his demand is a straight line determined by the meridian of *Punta Golfito*, which runs as far as the spot at which the line cuts across the Tarire River.

By an error the co-ordinates were taken, not of the mouth of the Golfito River, but of *Punta* (Point) *Golfito*, situated several miles further to the west of that river, within territory admittedly Costa Rican.

Therefore, according to Panama's interpretation, the line indicated in the Loubet Award penetrates, in the shape of an angle or wedge, into Costa Rica above the Tarire River, reaching as far as the point in the Main Cordillera called Chirripó Grande, and also doubling back in a straight line as far as Cerro Pando. The vertex of this angle pierces the very heart of Costa Rica's territory; that is, it reaches that point which the learned Doctor von Frantzius¹ describes as the center from which start, on their way to the Atlantic and Pacific, the great rivers of the interior of Costa Rica—the Reventazón, the Pacuar, the Chirripó, the Rio Grande de Térraba, the Barú and the Naranjo, and, he should have added, the Parrita. This point is very close to Cartago, the ancient capital of the country, and to very important and populated places of the Province of San

¹The Southwestern part of the Costa Rican Republic, published in the Report of the Justus Perthes Geographical Institute, Vol. XV, 1869.

José (the city of that name being its present-day capital), and it is that point which was indicated herein in discussing the geometrical interpretation of the text of Article 2 of the 1886 convention.

Chirripó Grande is distant, in a straight line, 44 kilometers from the Pacific and 71 from the Atlantic; so that the line of the Award penetrates into the very heart of the Costa Rican territory and may justly be termed the "Dagger of the Award."

Such was the interpretation advanced by the Minister of Panama, Doctor Porras, at the conference between him and the Minister of Costa Rica, Señor Anderson, which was held in the office of the Secretary of State at Washington on February 14, 1910 (Doc. No. 469).

Whatever may be the interpretation given to this article, one thing that cannot be successfully denied is that that wedge-shaped territory, claimed to have been adjudicated to Colombia, is in excess of the line of that party's demand, which demand, in its turn, went far beyond the boundaries of the controversy and those of the arbitration treaty, and that, therefore, the Award labors under the defect of *ultra petita*; for, to justify that interpretation of the Award, the Arbitrator would have had to be in the position of conceding more than was asked for, and more than could have been rightfully asked for in the arbitration.

The defect of *ultra petita* is the more serious because involved in an arbitral proceeding in which neither the parties nor the judge could free themselves from the binding force of the terms under which the arbitration was agreed to. Señor Silvela asked for more than Colombia claimed at the time of agreeing to the arbitration, and according to Panama's interpretation of the Award, the Arbitrator granted more than Colombia claimed, and more than was demanded, in her name, by Señor Silvela.

Article 2 of the arbitral Convention of 1886, which was additional to that of 1880, fixed as the *extreme* limit of Colombia's claim, two points: the mouth of the Golfito River and Cape Gracias a Dios.

Adhering strictly to the letter of the text, there could be no other interpretation, in geometrical terms, than that giving a straight line connecting those two points, as has been hereinbefore shown. But it has already been seen that that interpretation does not accord with the other terms of the treaty, or with Colombia's claims. According to that interpretation Colombia would not have been able to ask for the Atlantic zone that lay to the west of the geometrical line referred to. And as the mathematical reasons that called for the adoption of the straight astronomical line between Golfito and Gracias a Dios, made imperative the tracing of another straight line between Cape Gracias a Dios and the Escudo de Veragua, the adjudication of the islands Cayos de Albuquerque, San Andrés, Santa Catalina and Providence, is logically without foundation—and this apart from the fact that they were not involved either in the controversy or in the demand.

Disregarding that interpretation, therefore, it becomes necessary to look to the spirit of that article, presuming the willingness of the parties to agree to it. It would be absurd to presume that Costa Rica, who traced so exactly the extreme boundary of her claims, would accede to the possibility of going out of existence as a nation or losing half of her territory by authorizing the Arbitrator to connect the two extreme points of the Golfito River and Cape Gracias a Dios, either by a straight line or by any other of the infinite variety that can be imagined. The logical theory is that both parties were in accord in adhering to the terms in which the questions were submitted at the time of agree-

ing to the arbitration, which terms, as far as the claim of Colombia is concerned, were synthetized in the Conclusions of her Senate, and in accordance with which Conclusions her government signed the arbitral convention.

In reality the Colombian Senate, in its First Conclusion, prescribed as a divisional line the one formed by the Culebras River from its mouth in the Atlantic. Therefore, neither Señor Silvela's demand nor the Award of President Loubet could extend beyond the mouth and course of the Sixaola River in the supposition that it was the Culebras; because in crossing beyond those points, the Award would incur (as it did) in the defect of *ultra petita* with respect to what was claimed as the extreme boundary on entering into the arbitration agreement.

From whatever angle the Loubet Award is viewed, two *incongruities* are always apparent: one, that of fixing Punta Mona as the extreme boundary point; and the other, that of indicating as the divisional line the counterfort which supposititiously starts from that Punta, thus giving to Colombia the two banks of that river. The Colombian Senate stated very clearly that the mouth of the Culebras was the point at which began the two boundaries desired by that republic: that of the Atlantic littoral, and that of the interior between the two seas, the latter following the course of that same river. Confounding the two questions and treating them as one, Señor Silvela asked for a single boundary; but it must be noted that the vertex of the angle made by the two straight lines that form it established the Sixaola River as the divisional line of the two distinct territories claimed.

President Loubet, having decided the question of the Atlantic littoral in favor of Costa Rica, his Award does not square with the terms of the other question when he desig-

nates Punta Mona—a point which Colombia had not asked for, and which is located beyond the mouth of the Sixaola—and when he throws the divisional line across and beyond that river which Colombia had indicated as her extreme boundary in its own course.

In accordance with the accepted doctrine of international law governing arbitrations, such defects as that of *ultra petita* and incongruity in the decision, would be sufficient in themselves to annul the Award of President Loubet.

But the nullification of the Award is not asked for; it will be sufficient that the Honorable the Chief Justice should take into account this excess of power of the French Arbitrator in preparing his decision. This does not mean that he is asked to reach his decision by accepting the real extreme boundary of Colombia's claims, but that he decide by establishing, inside of this extreme, a boundary that will be more in accord with justice in the light of the other antecedents, circumstances and considerations to which he must also give weight.

(3) CRITERION AND INTENT OF PRESIDENT LOUBET IN THE DECISION OF THE ARBITRATION.

It is difficult to determine with any degree of precision what criterion President Loubet followed in reaching his decision, for his Award vouchsafes no reasons. It is made up solely of a preamble, the statement as to "having taken cognizance of all the documents" and the decision.

In the preamble President Loubet affirms that by virtue of the 1896 Convention, he possesses full power "to indicate according to the *principles of law and historical precedents*, the demarcation of boundaries that should take place" between the Republics of Colombia and Costa Rica. That positive affirmation unquestionably warrants the

assumption that the *intent* of President Loubet was to reach his decision in conformity with the principles of law and historical precedents, for it is not to be presumed that his purpose was to proceed in a manner at variance with his understanding of the powers conferred upon him.

The Arbitrator goes on to say:

"Having taken cognizance of *all* the documents furnished by the Parties to the cause, and *especially*: (1) In that which concerns Colombia (briefs, opinions, chronological summary of titles, maps); (2) In that which concerns Costa Rica (briefs, books and historical and geographical collections of Señor Peralta), and *in general*, of all things and all decisions, *capitulaciones*, Royal orders, provisions, Royal cédulas and laws, issued and promulgated by the ancient Spanish Monarchy, absolute sovereign and free disposer of the territories which later formed part of the two Republics."

And he adds:

"Having proceeded to a minute and searching study of the said acts, submitted to Us by the *Parties*, *especially*: of the Royal cédulas of 1513 [Doc. No. 4] (in this citation and subsequent ones the day and month are omitted for brevity) and 1521 [Doc. No. 5], of the Royal provision of 1529 [Doc. No. 7], of the Royal cédulas of 1537 [Doc. No. 13], 1541 [Docs. Nos. 22 and 25], 1557 [Doc. No. 32], 1560 [Docs. Nos. 38 and 39], 1561 [Docs. Nos. 47 and 48], 1563 [Doc. No. 50], 1568 [Doc. No. 57], and 1572 [Doc. No. 61], of the *capitulación* of Pardo of 1573 [Doc. No. 62], of the *Recopilación de las Leyes de Indias*, and particularly of Laws IV [Doc. No. 106], VI [Doc. No. 107], and IX [Doc. No. 135] of this collection; of the Royal cédulas of 1722 [Docs. Nos. 157 and 159], 1739 [Doc. No. 163], 1740 [Doc. No. 164], 1742 [Doc. No. 165], and 1756 [Doc. No. 170]; of the different instructions emanating

from the Spanish Sovereign and addressed as well to the superior authorities of the Viceroyalty of Santa Fe as to those of the Captaincy-General of Guatemala during the course of the XVIIIth Century and in the following years: of the Royal orders of 1803 [Docs. Nos. 191 and 192] and 1805 [Doc. No. 196] and of the stipulations of the treaty concluded in 1825 [Doc. No. 257], between the two independent Republics, etc, etc."

After those two paragraphs, and after declaring that he has neglected nothing that might aid him in weighing the value of the titles invoked, the Arbitrator proceeds to his decision.

If to these paragraphs are added: (1) the invocation of the Treaty of 1825 made by the Arbitral Convention of 1880; (2) the consideration borne in mind at the signing of the Additional Convention of 1886 which committed the arbitration to the Spanish government, to wit, that there reposed in the archives of Spain the greater part of the documents that he needed "*for deciding with certainty and full knowledge of the matter the pending question of boundaries,*" and (3) the character of the discussion had in the arbitral proceeding—a discussion which, on the common ground of accepting the colonial *uti possidetis* established in the treaty of 1825, always turned upon the facts, titles and dispositions of the time of the Spanish domination—it must be deduced that the *intention* of President Loubet was to decide the case in accordance with Spanish colonial law; that is to say, as the King of Spain, under that law, would have decided the question of boundaries between the Province of Costa Rica and its adjacent province, or between the two contiguous vicerealties under his sovereignty, on the eve of their Emancipation.

The Crown of Spain would have then decided the question of the Atlantic zone as it has been decided by President Loubet, disregarding the claim founded on the Royal order of San Lorenzo of 1803, and the arguments of Colombia's counsel. But President Loubet has not decided the question of the interior boundary from sea to sea as the Spanish Crown most certainly would have decided it, for the latter was more thoroughly conversant with the case. This, of course, is not strange, in view of Spain's three centuries of jurisdiction exercised under the wise coöperation of the Council of the Indies.

The Spanish Crown, after a consideration of the historical documents and antecedents, never would have held that the *Culebras*, Chiriquí or Calobébora River—which those authorities refer to as bounding Costa Rica on a line with the Escudo de Veragua—could be the Sixaola River; rechristened with the name of *Culebras* by Colombia in her successive attempts at territorial expansion.

Nor would it have admitted the identity of the two rivers *Culebras* and *Dorados*, or confounded the latter with the *Sixaola*.

Much less would the Crown of Spain, in enumerating the dispositions which had been the subject of "minute and searching study" in preparation for a decision of the question, have omitted, as did President Loubet, any mention of two of the laws embodied in the compilation of the Indies of paramount importance to Costa Rica: Law 1, title 1 of book V (Doc. No. 131), which orders the maintenance of boundaries established by laws, official titles, *provisions* of superior governments, or by use and custom legitimately introduced: and Law 1, title 2 of the same book (Doc. No. 136), which declares that the Government and Captancy-General of the Province of

Costa Rica belongs to the Audiencia of Guatemala, of the Viceroyalty of Mexico, while the Province of Veragua depended upon the Audiencia of Panama, of the Viceroyalty of Peru. Both were laws of Carlos II, himself the author of the Compilation of the Indies which was published in 1680, and, therefore, subsequently to the Royal cédula of 1537 (Doc. No. 13), on which rests the entire argument of Colombia.

These are all circumstances that must be taken into consideration by the Honorable the Chief Justice in order to arrive at a due estimate of President Loubet's Award.

But the principle of colonial *uti possidetis*, being insufficient (whether rightly or wrongly applied) to explain President Loubet's criterion for his adjudication to Colombia of a territory as vast in extent as that comprised between the line of the Escudo de Veragua and the true Culebras, Chiriquí or Calobébora River, and of the line claimed by that republic in the arbitration, it becomes necessary to resort to another principle: that derived from the fact of *present occupation*, which principle might have been invoked by the Arbitrator for his criterion, not only to extricate himself from the difficulties arising out of the geographic-historical controversy, but for the value that is given to possession in questions of boundaries, although international law requires that possession must be as of time immemorial, uninterrupted and unopposed.

The Colombian Senate, in its First Conclusion, declared that Colombia had a perfect right of dominion and *possession*, based on titles emanating from Spain, to the territory that extends to the line traced from the mouth of the Culebras River, on the Atlantic, to the Golfito River on the Pacific; and in its Third Conclusion, it declared that "Colombia has been in uninterrupted *pos-*

session of the territory included within the limits indicated in Conclusion 1." It is very natural to suppose that this insistence by Colombia on the fact of uninterrupted possession had its influence on the Arbitrator in resolving his doubts, and in determining his criterion.

The fact is that the Arbitrator did not concern himself with Colombia's earnest effort to reject the colonial *uti possidetis de facto*, or with the fact that she had not proved the boundary she claimed in the arbitration—a claim made in order to devote herself exclusively to the demonstration of her right to all of Costa Rica's territory; and, believing that Colombia's possession extended in reality over all of the Sixaola River, confounded as it was with the true Culebras (it being thus that Colombia's progressive usurpations, initiated in 1836, never went beyond the right bank of the Sixaola near its mouth and never reached as far as the confluence of this river with the Yoruquén) the Arbitrator, in his decision, jumped over the Sixaola and proceeded to indicate the divisional line by means of a supposititious counterfort connecting Punta Mona with the Main Cordillera. The lack of geographical data of which Minister Delcassé speaks is quite apparent!

From all of the foregoing, it becomes very *evident* that President Loubet's *intention* was to act under the inspiration of the *principles of law* and *historical precedents*, as declared in the preamble of his Award, and of *Spanish colonial law*, according to the paragraphs therein that refer to the documents he considered and the arguments submitted during the proceeding; and that it may reasonably be *presumed* that it was his intention to give weight to the *fact* of possession. And as the Honorable Chief Justice is called upon to give the correct interpretation of the Award—that is to say, an interpretation purging

it of error—and to proceed in accordance with President Loubet's intent, taking into consideration all of the facts, circumstances and considerations of the case, he has a broad field wherein to do full justice and correct the Award wherein it failed to accord with its author's intent.

CHAPTER VI.

OPPOSITION TO THE LINE INDICATED BY THE PUNTA MONA SPUR.

I. PANAMANIAN INTERPRETATION OF THE AWARD; ITS PHYSICAL IMPOSSIBILITY.

II. RESULTS OF AN EXPERT SURVEY MADE ON THE GROUND.

- (1) PUNTA MONA LACKING IN TOPOGRAPHICAL CON-
DITIONS TO SERVE AS THE STARTING POINT
OF THE LINE.
- (2) THE PUNTA MONA SPUR DOES NOT EXIST.
- (3) WHAT IS UNDERSTOOD BY A "SPUR."

III. LOCAL TOPOGRAPHY.

- (1) THE PUNTA MONA SWAMP.
- (2) THE SUPPOSITIOUS PUNTA MONA SPUR.
- (3) THE DIVIDE NORTH OF THE SIXAO LA RIVER.
- (4) THE FANTASTIC DIVIDE ACROSS PUNTA MONA
SWAMP.

IV. DISTINCTION BETWEEN "VALLEY" AND "BASIN."

- (1) WHAT IS UNDERSTOOD BY A "VALLEY."
- (2) WHAT IS UNDERSTOOD BY A "BASIN."

V. EVEN SUPPOSING THE EXISTENCE OF THE PUNTA MONA SPUR, THE PANAMANIAN INTERPRETATION OF THE AWARD IS NOT ADMISSIBLE.

- (1) IT WOULD GO BEYOND THE LIMITS OF THE TERRITORY IN DISPUTE.
- (2) NOTORIOUS INJUSTICE AND POLITICAL INCONVENIENCE OF THE PANAMANIAN INTERPRETATION.

I. PANAMANIAN INTERPRETATION OF THE AWARD; ITS PHYSICAL IMPOSSIBILITY.

A conference was held at the Department of State in Washington, on the 14th of February, 1910 (Doc. No. 469), between the Ministers Plenipotentiaries of Costa Rica and Panama and in the presence of three representatives of that department. At that conference, which had been arranged for the purpose of reaching an agreement, the Costa Rican Minister, Señor Anderson, asked the Panamanian Minister, Señor Porras, how his government interpreted the Arbitral Award, whereupon Señor Porras replied that his government's interpretation was the same as that held by the Government of Colombia, as follows:

"Starting from Cape Mona there is a spur of the mountain which goes to meet the central mountain range. This spur of the mountain closes on the north the valley of the Sixaola River. The interpretation which Panama gives to the Loubet Award is from Cape Mona following the watershed of this spur which separates the waters which empty into the Sixaola from those which empty into the River Estrella. The line then follows along the central range to near the *9th parallel*, and from that point toward the south to Punta Burica, along the crest of the mountain range

which separates the waters which go to the Gulf of Dulce on one side and those which go to the River Chiriquí Viejo on the other, *provided that this line WILL IN NO WAY GO BEYOND COLOMBIA'S MAXIMUM CLAIM.*"

Señor Porras, when requested to indicate these courses on a map, refused absolutely to do so.

The Award of President Loubet holds:

"The frontier between the Republics of Colombia and Costa Rica shall be formed *by the contrefort of the Cordillera which starts from Cape Mona, on the Atlantic Ocean, and closes on the north the valley of the River Tarire or River Sixaola; thence by the chain of the watershed between the Atlantic and the Pacific to about the ninth parallel of latitude; it shall then follow the line of the watershed between the Chiriquí Viejo and the affluents of Dulce Gulf, ending at Punta Burica on the Pacific Ocean.*"

Both of the foregoing texts start on the supposition that there is a counterfort, or cordillera, which starts from Punta Mona and connects that cape with the Main Cordillera. But there is absolutely no such counterfort, or cordillera, and any line based upon its existence, is therefore physically impossible.

This impossibility was shown convincingly by the report submitted by the eminent geographer, Monsieur H. Pittier, to the Government of Costa Rica giving an account of his explorations of 1900 (Doc. No. 584).

This distinguished geographer, speaking of Punta Mona, said:

"* * * (On my return, I followed the foot of the next range of hills to the south, *and could convince myself that the Punta Mona Hill is completely isolated by a broad swamp, remnant of a former arm of the sea. Not long ago, indeed, that Hill was an island, just as*

were the Limón Hills and many others along the coast. *It is not and never has been the end of any spur of the high mountains that form the backbone of the country.*"

Referring to various elevations of the interior country, on the farther side of the swamp above mentioned, he added:

"At first we met with several elevations, some elongate and with their axis parallel to the coast, the others mound or knob-like, *but all more or less disconnected*, so that it was very difficult to follow the circulations of the line dividing the watersheds * * *. At no remote period they formed quite a swarm of *little islands along the coast*, located then further south, just as did the hills around Port Limón."

And farther along he added:

"West of Cuabre the hills become larger and somewhat *higher, but continue isolated, with their axis parallel to the coast. Except for that uniformity in their direction, they are very indifferently located*, and this, as well as the changes produced by erosion on their primitive form, make it quite difficult to locate the intricate line of watersheds."

He ends by saying:

"I HAD SEEN ENOUGH TO BE CONVINCED THAT THERE IS NO CONNECTION, NO *contrefort* WORTH THE NAME, BETWEEN THE GREAT CORDILLERA OF TALAMANCA AND PUNTA MONA * * *."¹

In another report, dated October 6, 1900 (Doc. No. 584), Monsieur Pittier said:

"*Punta Mona*, also called Punta Carreta and Hualpuanta * * * is not the point of departure

¹Report presented to the Secretary of Foreign Relations, October 3, 1900.

for any cordillera, in the geographical sense of the word.

"These hills * * * are not connected by a continuous axis, nor with the spur that comes down from the Chirripó Grande between the Tarire and the Estrella; nor with the spur that begins from the Pico Blanco."

This fact, precisely as it was affirmatively stated, is fully confirmed by the report of the Engineers Commission (p. 30), when, referring to the spur that bounded the Punta Mona swamp—the same from which started the line of the arbitrary divide drawn across the surface of the swamp on the maps of the commission—it was thus described:

"The spur bounding the swamp, near Punta Mona, on the south extends toward Grape Point, with marsh between it and the sea beach."

II. RESULTS OF AN EXPERT SURVEY MADE ON THE GROUND.

(I) PUNTA MONA LACKING IN TOPOGRAPHICAL CONDITIONS TO SERVE AS THE STARTING POINT OF THE LINE.

There can be no possible doubt concerning the impossibility of locating the boundary line after the expert survey of the territory was made in the present arbitration by the mixed Commission of Engineers appointed by the Honorable the Chief Justice and the Governments of Costa Rica and Panama.

Costa Rica has maintained that all the territory lying between the left bank of the Sixaola River's outlet into

the Atlantic Ocean and Punta Mona presents a perfectly level, low, and in many places, a marshy surface.

This view has been absolutely verified by the report of the Commission of Engineers, the supplemental statement of Messrs. Ashmead and Hodgdon, the report of the geologist, Mr. MacDonald, and the data furnished by the Section Chief, Mr. Weakland, to whom the survey of that locality was entrusted. The data secured by the Commission was embodied in the maps it presented, wherein the region under discussion appears as a vast plain, extending from the mouth of the Sixaola River, as far as Punta Mona on the shore of the sea; and toward the interior it does not end until it reaches the foothills that bound it on the north and on the west. That plain in many places is marshy.

At Punta Mona there is an insignificant elevation of land which, like the hills extending westward to Manzanillo, faces the ocean and is found to be separated from the plain above referred to by a deep and permanent swamp, several kilometers in width, which completely isolates that elevation of Punta Mona as well as the hills along the shore that form its continuation to Manzanillo from the plain just described.

The general direction taken by this swamp is from southeast to northwest. It has outlets that are alternately open and closed; the former being the case when the waters rise and force their way out into the sea, and the latter happens at periods of low water in the marshes, when the sands of the ocean form bars and obstruct the outlets.

The *isolation of Punta Mona*, and the adjacent land as far as Manzanillo, was thus established, as a real and incontestable fact, an isolation that clearly prevents the

realization of the basic idea fixed in the Award of President Loubet concerning the spur or cordillera that was declared therein to be the frontier between the contending countries, on the theory that the spur started from Punta Mona. The latter may be considered as practically an island, lying between the swamp and the ocean.

On the other side of the swamp, in the interior, there are various elevations of land represented in minute detail on the plans of the Commission; but the elevations are entirely disconnected from Punta Mona, as those plans graphically show.

It would seem that the Commission tried to get over the break caused by the interposition of the swamp by tracing on its perfectly level surface—practically at the same level as the sea—an imaginary line that did not respond to any geographical actuality on the ground, and which the Commission expressly declared in its report to be an arbitrary line; and it stated at the same time that *it must be well understood that no actual, permanent or natural divide of the waters existed across that swamp, and that, as stated in the legend on the maps, the line that appears thereon traversing that same swamp was the line of a hypothetical divide, arbitrarily drawn.*

There could scarcely have been a greater exercise of arbitrary disposition; and yet it did not go so far as to give to that line the character of a "spur," which impliedly carries with it, as an essential condition of its existence, the idea of a projection of a portion of ground forming a prominence. Such a line, therefore, was not a *hypothetical spur* arbitrarily drawn by the Commission, even admitting that it might have been a *hypothetical divide*. Whether it was a divide or not, Punta Mona, for the reasons already given, was left in its original isolation, disconnected from

the high lands on the farther side of the intervening swamp that isolated it; and, consequently, the alleged "spur," supposedly originating in Punta Mona, was mathematically demonstrated to be a *myth*, even assuming that in the interior there might have been found a spur of the Main Cordillera which closed the valley of the Sixaola River on the north. Such a spur, however, never existed, as will be shown further on.

As to whether or not the spur of the cordillera, which by the decision of President Loubet was made to serve as a frontier for the contending countries, and forms the line closing the valley of the Sixaola River on the north (for the moment disregarding the section of Punta Mona and the surrounding swamp), has any existence, the Commission of Engineers had nothing to say in its report, as if the latter point had no primary importance among all those that it was called upon to settle, from a technical point of view. Nor did the Commission make any specific mention of the said spur, but contented itself with seeking to show the existence of the *divide* that marks the line separating the waters that flow toward the south to swell the stream of the Sixaola River from those that go to augment the Estrella and other rivers north of the latter.

That line constituted by the *divide* of the drainage area of the Sixaola River, on the north, will be taken up in due course; for the moment it will only be made clear, what one of the members of the Commission declared in a categorical way, that the Commission had no intention of giving to the word "*divide*" the signification of a "*spur*" (*contrefort*) for the word indicated, rather, "a line separating waters flowing into different drainage areas."

Even conceding, therefore, that the location of the divide on the north of the Sixaola River, from the Main

Cordillera to the ocean, as traced on the Commission maps, was correct, the result was that on those maps the *line of the spur or cordillera which was supposed to start out from Punta Mona in order to close the valley of the Sixaola River on the north, did not appear.*

It is a very significant fact that after a prolonged and costly survey of the entire region had been executed, for the purpose of solving, among others, the question as to whether or not the disputed spur had any existence, not a single word appears in the written report for or against the existence of that monument, nor is there any pictorial representation of it on the plans. Both of these omissions would seem to proclaim loudly the truth of the view maintained by Costa Rica, that *the said spur or cordillera has no existence*, for these omissions cannot be explained in any other way.

The Commission ought to have been explicit in its affirmation or negation of that fact; had it made a public statement, it is unquestionable that taking into consideration the geographical data placed at its disposal by the survey which had been made, it would unquestionably have been compelled to adopt the negative view.

In the orological situation of the region on the left bank of the Sixaola River a very singular characteristic predominates, which is that all the mountainous formations of that entire watershed, from the peaks of the Main Cordillera to the shores of the sea, are made up of a conjunction of secondary chains running parallel to the general course of that cordillera. The latter runs *from northwest to southeast* and that is the direction followed by the secondary chains. The rivers in their courses accommodate themselves to the same mountainous formation.

The discharge of the waters of that region, which is by way of the Tarire River, has a general course from west to east; that is to say, oblique to the axis of the Main Cordillera, and, by a winding course, it cuts across, one after another, the lower ends of all the secondary ranges to which reference has heretofore been made. The secondary streams which empty into the Tarire on the left bank, run *from northwest to southeast*, at an oblique angle with the axis of the Tarire, between these various ridges referred to which lie detached and parallel to the Main Cordillera. Consequently, the longitudinal dimensions of the valleys of such tributaries is from *northwest to southeast*, parallel to that Cordillera. Toward the headwaters of the tributary streams, between the ridges, and at an angle with them, there are land areas which to a certain extent connect such ridges, separating at the same time the waters flowing into the Tarire from those that empty into other basins to the north. It was to these lands that the Commission alluded in its report (p. 50). in the following words: "*In many places the watershed of the main river [Tarire] is low between the hills separating the tributaries. * * **" The watershed, therefore, is not made up of ridges, but of low lands between the ridges, such low lands in connection and forming angles with such ridges.

These are the lands which serve as a gauge for the line of separation of the waters, or northern "divide," of the Tarire River, represented on the Commission maps, which divide is filled out with portions of the slopes of the secondary ridges and parts of the crests of those same ridges, so as to afford a connection between the low places above referred to, and to which the Commission gave the ostentatious name of "saddles." In this manner was laboriously obtained the line of a "divide" which in a general way (and except for the arbitrary fashion in which

it was arrived at, from the point called Buena Vista to the shore of the sea) might perhaps be accepted as the line roughly marking the limit of the drainage area of the Tarire River on the north.

To attempt to convert such a heterogenous succession of summits of secondary ridges running parallel to the Main Cordillera into a spur of the Cordillera (which ought to be perpendicular or diagonal to the same) by the use of portions of slopes and low lying areas connecting one mountain ridge with another—studiously joined in order to make a hydrographic chain—is inconceivable, because *a spur is, and by its very definition must be, a secondary chain of mountains united to another and greater chain, from which it appears to project itself and to which it seems to serve as a support or buttress.* It is not a conventional conjunction of portions of crests, parts of flanks and fragments of dales, all of them artificially united.

(3) WHAT IS UNDERSTOOD BY A "SPUR."

The word "*contrefort*" (French) has been defined as follows:

Contrefort.—Buttress; spur; support. (Royal Phraseological English-French, French-English Dictionary, by J. Ch. Tarver, 3d ed.; London, 1858.)

Contrefort.—4. (Geol.) Lesser chain (of mountains). (Spiers and Surenné's French and English Pronouncing Dictionary, by A. Spiers, New York; Appleton & Co., 1872).

Contrefort.—Counterfort, buttress, pillar, pier (geol.); lesser chain. (Heath's French and English Dictionary; by James Boiellé, B. A.; Univ. Gall.)

Contrefort.—(Geogr.) Secondary chain of mountains, rising upon the flank of a principal chain and seem-

ing to support it. "The *contreforts* of the Alps * * *." (Larousse, Dict. Encyclo., XIX Century.)¹

A *contrefort* is a secondary range that branches off from a principal range. (Larousse, Dict. XIX Century.)²

Contrefort.—2. Geographical term. Small chains of lateral mountains which seem to serve as supports to a principal chain. "The *contreforts* of the Alps." (Littré. Dict. of the French Language; Paris, 1863.)³

Contrefort.—So-called by analogy, in physical geography, the small chains of lateral mountains that appear to support the principal chain, from which they depend. "The spurs or buttresses of the Andean chain." "The spurs of the Alps." (Dict. of the French Academy; 7th ed., 1878, p. 392.)⁴

Contrefort.—3. By analogy, a chain of lateral mountains serving as a buttress to a principal chain. "The buttresses of the Alps." (General Dict. of the French Language; Hartzfelt-Darmesteter, p. 527.)⁵

From all of the foregoing the deduction is arrived at that into the idea of a spur or buttress (*contrefort*—French) the following concepts enter as essential elements thereof:

¹*Chaîne secondaire de montagnes qui naît sur le flanc d'une chaîne principale et semble l'appuyer: les contreforts des Alpes.*"

²*Un contrefort est un réseau secondaire qui part d'un rameau principal.*

³*Terme de géographie. Petites chaînes de montagnes latérales qui semblent servir d'appui à une chaîne principale. Les contreforts des Alpes.*

⁴*Il se dit par analogie dans la Géographie physique des petites chaînes de montagnes latérales qui sont comme les appuis de la chaîne principale dont elles dépendent. Les contreforts de la chaîne des Andes. Les contreforts des Alpes.*

⁵*P. Analogie. Chaîne de montagnes latérales qui servent d'appui à une chaîne principale. Les contreforts des Alpes.*

(a) The *secondary* character of the spur or buttress, as related to the *principal* character of the chain or mountain range, from which it is an offshoot.

(b) The fact of the spur or buttress being united to the chain of the principal mountain range, *laterally*, that is, on one of its flanks.

(c) The fact that the spur or buttress apparently *serves as a support* to the principal range or chain.

From these conditions essential to a spur or buttress, the following results may be inferred:

(1) A spur or buttress *cannot run parallel* to the principal chain or mountain range from which it depends.

(2) A spur or buttress *cannot cut or intercept* one after another—either perpendicularly or obliquely—a succession of secondary chains or mountain ranges, parallel among themselves and parallel to the principal chain or mountain range.

These two very patent truths would have to be overcome in order to make possible the spur or buttress claimed by Panama. She has tried to accomplish this by setting up the enclosing line of the drainage area of the Tarire River on the north—a line which, as has been frequently reiterated in this argument, has a general direction oblique to the chains of parallel mountains before mentioned. But in order that such enclosing line—hydrographic but not orological—might be converted into a spur or buttress, it would need to be in itself a continuous *ridge*, discernible without instruments, and one which forming nodes on meeting with the mountains intervening in its path, must have its own natural existence, as every offshoot of a cordillera has which branches away from it to serve as a seeming support. In that case such a spur or buttress would be as real, effective and natural as the

chains parallel to the Main Cordillera with which it interlaces; under these conditions the auxiliary engineers and the Commission itself would have had no difficulty in declaring that the line of the divide north of the Tarire River formed at the same time a continuous counterfort, or spur, or buttress, of the Main Cordillera; it would have proclaimed unanimously the existence of the alleged spur and drawn it on the maps, simultaneously as a *divide* and as a counterfort.

However, if such a line of a divide did cut, one after the other, the secondary cordilleras running parallel to the Main Cordillera, following to a certain extent a direction parallel to that of the Tarire River—what mind could conceive the extravagant idea that the supposed spur would intercept each of the secondary chains and passing over them one after the other, in spite of swamps, valleys and ravines, pursue its course from the shores of the ocean to the Main Cordillera?

That spur does not exist; and for that reason the Commission kept a silence which was really eloquent in favor of the view that Costa Rica has supported and still maintains, a silence through which the truth permeated and compelled recognition, when the engineer, Mr. Harding, who was charged with the survey of the part of the line between Chirripó Grande and the peak of Doble or Chical, stated in a letter, which was mutilated when inserted in Appendix No. 3 to the Report of the Commission, p. 17, just at the part that favored Costa Rica, as follows:

“THIS RECONNAISSANCE DEVELOPED THE FACT THAT THE DIVIDE IS NOT A CONTINUOUS SPUR FROM THE MAIN CORDILLERA.”

The Commission of Engineers was required to affirm or deny, in clear, precise, and categorical terms, the existence of the supposititious *contrefort* or spur of the cordillera, which, starting from Punta Mona, closes on the north the valley of the Sixaola River, and this was done, in a separate vote, by Messrs. Hodgdon and Ashmead, respectively, in response to the questions proposed by the two parties.

Among the plans at the disposal of the Commission of Engineers in the execution of its task there was one of great importance submitted by the Representative of Panama, dated at Panama in December, 1910, and signed by Doctor Don Abel Bravo, Official Engineer of the Government of Panama (Plate V). On that plan there was traced, as the boundary between Costa Rica and Panama (referring to the Award of President Loubet) a cordillera branching off from the main one—this latter being designated thereon as “Los Andes”—and running to its terminal at “*Punta de Monos*,” or “*Carreta*.” This plan was filed in the case by the Commission when it rendered its report and was partially adopted in the tracing of the divide north of the Sixaola River.

There is submitted herewith a plate (Plate VII) drawn by Engineer Matamoros on which are compared: (1) the line of the divide north of the Sixaola River drawn by the Commission of Engineers; and (2) the line of the cordillera which starts from Punta Mona, as shown upon the map of Señor Bravo. These two lines in part coincide, but cross each other elsewhere and for the most part diverge one from the other, that of the Commission departing from the Sixaola River and Señor Bravo's line approaching that river, which line in this way is interposed between the river and its northern divide.

The terminal point for these lines is one and the same; that is to say, Punta Mona. They run over the swamp of that name and across that swamp they very nearly coincide; and the two lines are practically fused into a single line from the terminal point to the point marked "A," where the hypothetical divide of the Commission begins and runs toward Punta Mona over the aforesaid swamp. Proceeding onward from the point "A" to the point designated by the name of "Buena Vista," the approximate coincidence of the two lines continues, but in the middle of this distance there is quite a large section wherein some discrepancy is noted.

But from Buena Vista onward toward the west the coincidence of the two lines disappears and their divergence becomes so great that the line of the Commission, or divide north of the Sixaola River, is left situated to the north of Señor Bravo's line, and the latter runs to the south of the first-mentioned line and between it and the river above named, except for a very short space where the two lines touch, and two other short spaces where the two lines cross.

It is worth noting that the line of Señor Bravo is much shorter than that of the Commission, and both claim to reach the Main Cordillera, the terminal of the Commission's line being the peak of *Chirripó Grande* and that of the Bravo line, *Monte Urén*.

All of the details mentioned appear and are laid down on the map of Engineer Matamoros above referred to entitled:

"Map Showing Two Lines from Punta Mona to Chirripó Grande and to Monte Urén; Drawn Respectively by the Commission of Engineers and by Dr. Abel Bravo, Consulting Engineer of Panama.

As to whether the *contrefort* or spur of the cordillera which, starting from Punta Mona, closes on the north the valley of the Sixaola River, does or does not exist, attention is very earnestly drawn to the fact that great efforts have been made to discover a line of water division for the *basin* of the Sixaola on the north, entirely disregarding the line that, in the opinion of the official engineer of Panama, closes on the north the *valley* of the Sixaola, and which, according to that engineer, constitutes a continuous cordillera from Punta Mona to Monte Urén—the latter point belonging to the Main Cordillera, also called there the “Cordillera of Talamanca.”

The work of the engineer of Panama is far from correct, and it is enough to divest it of all credit to discover delineated on this map of Señor Bravo the unheard of fact of a line of summits running right over and across the Punta Mona swamp, as to the non-existence of which there can be no possible doubt.

Another circumstance that impeaches the accuracy of that work is the intersection of various contour or level-curves which appear on Señor Bravo's plan in the region where he drew the line of summits, and where, according to the Commission (and in fact), a swamp extends practically at sea level. It is an evident error for the level-curves of the same area to be confused among themselves.

But as the Commission adopted part of the line of Señor Bravo to represent a divide across the level surface of the swamp referred to and also another portion of it for the continuation of the divide out of the swamp—eastward to the sea and westward as far as Buena Vista—it is not easy to find an explanation for the repudiation of the rest of the Bravo line, which if it might well be disregarded as a northern divide for the waters of the Sixaola River, could

not be thus set aside and passed over as a cordillera marking the northern limit of the valley of the Sixaola, which its author rightly or wrongly claimed it to be.

If the two lines thus compared did have simultaneously any real existence, there can be no just reason for giving a preference, for the purposes of the demarcations of the frontier line, to a hydrographic chain situated at a greater distance from the river—in diminution of the territory of Costa Rica—over another line nearer to the river (not hydrographic but orological), particularly when it is remembered that the definition of said frontier line made in the Award is not that it is formed by a *division of waters* but by a “*contrefort*,” or spur, which is something entirely different.

With Señor Bravo's map before it, the silence of the Commission regarding the existence or non-existence of the supposititious “*contrefort*” of Punta Mona, is quite inexplicable particularly if the fact is taken into consideration that the Commission of Engineers gave credit and preference to the work of Señor Bravo over the actual and effective work done on the ground by the Commission itself—a work carried out by its own assistant engineers and appearing upon the field-notes and sketches of the latter which were deposited in the Tribunal by the Commission with its report and final plans.

Consideration should now be given to that portion of the divide line extending from the point known as “Buena Vista” to a point fifty meters to the northwest of the mouth of the river known as “*Middle Creek*.” That part of the survey line was abandoned by the Commission, without any known reason which could justify such abandonment. The tracing of it was omitted in the final maps and it would have been impossible to lay it out on

a map but for the courses that happily are to be found in the field-notes. By means of these it has been possible to undertake that work, and not only the course, but the horizontal line, and the respective profiles, have been reestablished, as may be seen on the accompanying plates (Plates VI and VIII) entitled:

“(1) Map Showing the Line Suppressed by the Commission and the Line Substituted therefor.

“(2) Profile of the Traverse Line that Follows a Permanent Divide to the Mouth of Middle Creek; Together with the Profile of the Hypothetical Line Arbitrarily Drawn Across Swamp A.

The line recognized by the engineers of the Commission is real and effective and is abundantly justified by the notes, sketches and written reports of those who were engaged upon it. On the other hand, the “hypothetical line,” if it is not laid exactly over that of Señor Bravo (who supposes a line of summits where the Commission delineates a swamp) really follows it very closely and coincides with it throughout nearly its entire length, under the express admission, as it has been so often observed, that such line was arbitrarily delineated on the final maps, during their construction, and is not an actual, permanent or natural divide; nor does it separate the waters across Swamp A. It is, just as the legend upon the maps expresses it, only a “line of hypothetical divide, arbitrarily drawn.”

The reason, motive, or cause for putting aside the true, natural and correct line, in order to adopt a line that in fact lacks all those conditions, is inexplicable, unless it be that the line which really did run in accord with the facts, ended on the left bank of *Middle Creek*, while the line which was at variance with the truth had its terminus at *Punta Mona*.

According to the Award, three great courses contribute to make up the frontier line in its entirety: one on the Atlantic slope; the second on the Pacific slope, and the third uniting the other two and coinciding with the line that separates the waters flowing into the two oceans. The point of departure of the supposititious counterfort which constitutes a part of the frontier on the Atlantic side, and the terminal point of that frontier in the Pacific, are clear, exact and well known. In one of the clauses of the arbitration Treaty of 1910, the Pacific section is declared to be beyond question and free from doubt. The rest of the frontier line is the subject of much doubt and many difficulties by reason of the generality and vagueness of the demarcation, the failure of the line to conform to the physical characteristics of the land, and the certainty that the Award has overstepped the terms of the arbitral agreement by adjudicating to Colombia territory to which she never made claim, and which, on the contrary, she expressly excluded from her demand in the arbitral proceeding, and to the loss of which, furthermore, Costa Rica could not have consented.

For better clearness, and laying aside the frontier on the Pacific slope, which is not the subject of the present controversy, the rest of the line will be divided into two great sections: the first (a) which, starting from Punta Mona, joins with the second section at some point on the Main Cordillera, and the last (b) which, starting from the point at which it is intersected by the line of the first section (a), terminates near Cerro Pando in the immediate vicinity of the ninth degree of north latitude, where the frontier section of the Pacific side begins. The characteristic of section (b) is its coincidence with the line that separates the waters flowing into the two oceans.

For marking with precision on the ground the two sections of the frontier above mentioned—one corresponding to the Atlantic slope and the other to the line separating the waters flowing into the two oceans—the indications contained in the Award, besides being extremely vague, are utterly insufficient. The description of section (a) is confined to these words: "Counterfort of the cordillera which starts from Cape Mona, on the Atlantic Ocean, and closes on the north the Valley of the River Tarire, or River Sixaola." These are the only indications. If in fact there did exist a counterfort of the cordillera which, starting from Punta Mona closed on the north the valley of the said river, the frontier line would be perfectly clear and could be marked out with absolute precision. The data submitted by the Commission of Engineers which made the survey of the land in the frontier region has placed in evidence the fact that the clearness and precision claimed for the frontier line in the Award, do not exist; indeed, how to transfer to the land itself the frontier line decreed is a problem bristling with geographical and legal difficulties.

III. LOCAL TOPOGRAPHY.

In the light of the data contained in the Report of the Commission the local topography will now be taken up; first the Swamp of Punta Mona, second the "*Contrefort*" (spur or counterfort) third the Divide north of the Sixaola River and finally, the Divide across the Swamp of Punta Mona.

(1) THE PUNTA MONA SWAMP.

The data furnished by the Surveying Commission are very scant; but, as the report (p. 51) points out that: "The general topographic characteristics of the territory

are shown more clearly on the maps than they can be by a written description * * *," and adds further on (p. 52) that, "The general characteristics of the country are fairly well indicated by the extracts from the reports and letters of the Assistant Engineers and the report of the Geologist;" it, therefore, becomes necessary to resort to all of those sources of information in order to supply the deficiencies of that report.

The topographical maps show that between the mouth of the Sixaola River and Middle Creek, the intermediate ground is so level that the engineers were not able to draw curve-heights having an elevation of ten feet above the level of the sea, and also that the highest of the insignificant elevations of Punta Mona project above sea level only about thirty meters. These elevations are found to be isolated by a swamp which surrounds them upon all sides, except toward the ocean.

Back of these elevations, across the swamp, there are other elevations, entirely disconnected from those of Punta Mona. In order to connect these latter and those of the interior country, the Commission *had to create an artificial line*, to which the Commission, with perfect propriety, applied the term "arbitrary," indicating, not a *spur* (*contrefort*) or a *cordillera*—for such did not exist—but a *divide* (also non-existent), and it then proceeded to carry this imaginary line to Punta Mona. As such a line of a *divide* fails utterly to take the place of the *contrefort* or *cordillera* which, according to the Loubet Award, formed the frontier between Costa Rica and Panama, the existence of a connection was imagined between the elevation of Punta Mona and the elevations to be found on the other side of the swamp that surrounds the said Point or Cape; and this hypothesis was based upon another hypothesis;

that is, just as it is said that the result of explorations at the Chagres River shows that it had an old channel at a depth of 114 meters below the level of its present one, so in the same way, below the swamp and at the depth of 120 meters, there is or ought to be found the channel of a very ancient stream, a tributary of the Sixaola.¹

In the support of the hypothesis certain basic facts are invoked, to-wit, the apparent sedimentary character of the submerged flat plains along the rivers of Panama and Costa Rica that empty into the Caribbean Sea; the fact that many swamps exist along the borders of the Caribbean; the theory of Hayes, that Nicaragua was at one time more than 60 meters higher than it is at present, etc.

Arguments of this sort require no answer.

Fortunately, the author of this extravagant hypothesis took the pains to declare, in his geological report (pp. 8 and 9), that his investigation had been limited to the ground between latitude $9^{\circ} 35'$ and $9^{\circ} 38'$ and longitude $82^{\circ} 38'$ and $82^{\circ} 60'$; that is to say, to a rectangular area of three minutes ($0^{\circ} 3'$) of latitude by twenty-two minutes ($0^{\circ} 22'$) of longitude, from which it results that neither Punta Mona, or the swamp (for the most part), was the object of his labor, so that whatever he said as to them is without force.

Moreover, if the specific mission of Mr. MacDonald was to undertake “* * * a minimum amount of surface geological examination necessary to ascertain the general character of the Delta of the Tarire or Sixaola River and the hills at and near Punta Mona * * *” (Report of the Commission, p. 13), whatever the geologist said as to depths greater than a few meters below the surface of those areas—particularly in the absence of any borings

¹Report of the Geologist, pp. 19-23.

to prove his statements—would clearly be mere unverified conjectures, without purpose of application and quite without authority in the case under discussion.

All this is mere "guess-work;" but, even admitting it to be proven, the result would be that neither a *divide* nor a *contrefort* traversed, at that remote epoch what is now the swamp, for in that very location, according to the second hypothesis, a tributary of the Sixaola would have flowed, which naturally and of necessity would have crossed either the *imaginary divide* or the *supposititious spur*. This fiction of an ancient *divide* or *spur*, beneath the swamp at a depth of 114 meters, does not appear upon the maps of the Commission; but it is found in the report of the geologist, Mr. MacDonald, which was presented without emendation—rather, indeed, with commendation by the Commission of Engineers.

There was no more reason for the fantastic creation of a *divide* underneath the swamp that extends around Punta Mona, than there would have been to suppose that in pre-historic times a *divide* existed between Punta Mona and the next island of "Gumblet," which, it is said, formed at one time a part of the hills of Punta Mona.

It is only common sense, that the Commission's hypothetical "divide" cannot be an actual or present one, but at the very best a pre-historic mass, *pluscuam preterit*—a mass that perhaps existed at some time, but does not exist to-day; and probably never did exist. But even admitting the preterit existence of such "divide," it would fail to have any bearing in this case, inasmuch as it is not sought to revive a frontier traced in far off geological epochs, but a frontier that was proclaimed only yesterday, in the year of our Lord 1900, when for thousands, if not millions, of years the bed of the river constituting the imaginary "divide" or "spur" had been buried under the waters.

In length the swamp extends from near Middle Creek to the northwest as far as Grape Point, its width varying between the elevations of the littoral that rise from Punta Mona to Manzanillo and the foot of the broken ground at the southwest. The first dimension is 10 kilometers, and the second has an average of $1\frac{1}{2}$ to $2\frac{1}{2}$ kilometers. This swamp is called a "saddle" by the Geologist, Mr. MacDonald, and a "specially low saddle" by the Engineer, Mr. Hodgdon. As stated by the Commission in its report, the surface of this swamp is practically at the sea-level and is flat. It collects the waters from a very considerable basin, which it serves, and as its principal outlets into the ocean, which are found at almost the same level as the swamp, are frequently closed, it holds the water it receives until such time as the accumulations of the latter break through the bars and allow it to flow into the sea, forming new channels. Very often the entire swamp is found to be *completely flooded*.

Under such conditions it is an utter impossibility to run a line of separation of waters across the marsh; and, therefore, at the suggestion of the engineer, Mr. Ashmead, the Commission made it clear that the line traced across the swamp on the map, as a "divide" *was an arbitrary line*, and that it *did not represent in any way an actual, real, effective or existing "divide."* In view of this public confession, the time employed in tracing such a line was really wasted and it is equally a waste of time to combat that line, since it involves the discussion of a thing that is absolutely non-existent.

All the secondary divides, branching off from the principal divide—one of them the hypothetical tracing across the Swamp of Punta Mona—lack the feature of permanence, according to the Commission, for a great part of the

surface shown on the plan at a height of less than twenty meters above the level of the sea is very often inundated. The correctness of this statement is not so important as the fact that the Commission makes it, and thereby produces the inevitable conclusion, that all the secondary divide lines which run through the said region from the Sixaola River to Grape Point are of a fluctuating and doubtful character. When that considerable region of low and marshy land is flooded, the Commission states, every "divide" disappears and there is nothing left under foot as an actual and unquestionable geographical reality, except the continuation of the true and only "divide" abandoned at Buena Vista, which serves as the real and permanent limit, discernible at all times and indisputable, the one that, a few kilometers from Buena Vista, leads to the shore of the sea, a little to the east of the Cocles River.

The foregoing being thus firmly established by the data of the Commission itself, it is fully demonstrated that the divide north of the Sixaola does not, and can not terminate on the Atlantic ocean, at any of the points embraced between Punta Cocles and the outlet of that river, and, therefore, that Punta Mona, which occupies a place midway between those extremes, is not and can not be the eastern extremity of that divide.

If a cordillera *contrefort* (such as contemplated in the Loubet Award, or a divide of a river basin, such as Panama, in default of the former, seeks for a frontier under her interpretation of that decision) is to be sought for to the west of Punta Mona, it would be necessary for the Honorable Arbitrator to still further aggravate the disadvantageous position of one of the parties by moving the line's point of departure to a point many kilometers inside the territory of that party, until it encountered

some ground formation that might serve either for a *contrefort* or for a line of water division.

The operation of the survey made it perfectly evident that no spur issued from Punta Mona, nor did any divide run thereto. This was clearly and positively brought out in the Report of the Commission, when it stated (p. 50):

“From Chirripó Grande, on the Main Cordillera, extending to the ocean near Punta Mona, is the divide separating the waters of the Sixaola or Tarire River on the south from the other river on the north.
* * * This divide runs along a ridge or series of ridges of varying widths, composed of high points and saddles, starting at an elevation of about 3,800 meters at Chirripó Grande, becoming gradually lower as the sea is approached, until sea level is practically reached at Swamp A * * *. From Chirripó Grande *to within a short distance of the sea* this ridge or series of ridges carries the divide which limits the drainage area of the Sixaola River on the north, BUT NEAR THE SEA A FEW SMALL RIVERS OR CREEKS ON THE SOUTHERLY SIDE FLOW DIRECTLY INTO THE OCEAN * * *.”

As appears by this text, the divide north of the Sixaola River approaches the sea, but does not reach it, just because there are interposed between the latter and the extremity of the divide not only the swamp of Punta Mona, but also the basins of various small streams that discharge directly into the ocean.

(2) THE SUPPOSITITIOUS PUNTA MONA SPUR.

Inasmuch as on the left or northern bank of the Tarire and Sixaola Rivers there co-exist without confusion, in the first place, the valley peculiar and proper to the principal river itself, and in the second place, the valleys belonging to the tributary rivers—all of them, both principal and

secondary, technically independent of each other—it is impossible, for an evident physical reason, that on said left bank of the Tarire and Sixaola the *principal valley could be limited by any "contrefort."* This impossibility grows out of the fact that, a spur being a prolongation of a mountainous body or mass, which serves in a way as a support or buttress to another mountain body that is higher and of greater proportions, there is inherent in the spur the characteristic condition of *unity* and *continuity*, from the point at which it branches off to the point of termination. Such single body or mass ought, moreover, to fulfill the condition of bounding the valley of the river on the north; but this it cannot do, because the secondary valleys would cut the spur, completely changing its nature, for instead of there being a single body there would result merely a succession of elevations and depths, all cut across, exactly upon the winding line separating the principal valley from the subordinate or concurrent valleys.

In order that there might be a spur to the north of the Sixaola River, closing its valley, the topography on that side would necessarily have to be of the following character: (a) a continuous mountain body, real and effective, bounding the valley of the said river; and (b) a complete absence of tributary streams and, consequently, of lateral valleys on that side, as drawn in the accompanying Diagram E.

In other words, there can be no reconciliation between the two following ideas: (1) the existence of a spur on the north side of the Sixaola bounding the valley of that river; and (2) the existence of tributaries to the river on the north, with their respective transverse valleys.

It might very well be that a spur could exist to the north of the Sixaola River concurrently with tributaries

of the Sixaola on the same side; but in that event it would inevitably result that such spur should not limit, on the *north*, the *valley* of the Sixaola River, but its *basin*, and all of the valleys, both principal as well as subordinate, would then be embraced in the basin or general drainage area of the aforesaid river.

But it ought to be kept in mind that this supposition is not that of the Award, for the *contrefort* spoken of therein does not limit on the north the *basin* of the Sixaola and Tarire, but only the *valley*.

(3) THE DIVIDE NORTH OF THE SIXAOLA RIVER.

One fact that attracts special attention in the voluminous report of the Commission is that not once (not even incidentally) does it speak of the *contrefort of the cordillera which, starting from Punta Mona and closing on the north the Valley of the Sixaola*, forms the limit between Costa Rica and Colombia, according to the Loubet Award. The Engineer, Mr. Ashmead, explained this fact by saying that the existence and the location of that *contrefort* being one of the points submitted for arbitral determination, the Commission thought it best to abstain from expressing any idea that might prejudice the question; and he added that the expression "divide north of the drainage area of the River Sixaola," which the Commission employs constantly in its report, does not bear a significance equivalent to that of "*contrefort*" of the cordillera which, starting from Punta Mona, closes on the north the valley of the Sixaola. (Ashmead: Supplementary Statement, p. 26).

In accordance with one of the provisions laid down in Plan V, the Commission carried out the topographical examination of the line of division of the drainage area of the Tarire River between Punta Mona and the Main Cordillera. The plans and profiles of the Commission

are perfectly clear, and mark—at some places with pretension to exactness and at others only approximately—the northern border of the basin of the river mentioned.

But what cannot be accepted with any degree of acquiescence is the description or definition of the aforesaid “divide,” which is given in the report of the Commission in the following terms:

“This divide runs along a ridge or series of ridges of varying widths, composed of high points and saddles, starting at an elevation of about 3,800 meters at Chirripó Grande, becoming gradually lower as the sea is approached, until sea level is practically reached at Swamp A.

“From Chirripó Grande to within a short distance of the sea this ridge or series of ridges carries the divide which limits the drainage area of the Sixaola River on the north; but near the sea a few small rivers or creeks on the southerly side flow directly into the ocean. The headwaters of those streams are between the various branches of the lower or ocean end of the ridges or series of ridges, just as various tributaries of the Sixaola have their headwaters between the branches of the same side of the upper portion of the same ridge or series of ridges.” (Report of the Commission, p. 50).

According to this, the aforesaid divide between Chirripó Grande and Punta Mona runs along “a ridge or series of ridges,” made up of elevations and depressions, from a height of 3,800 meters down to practically sea level. Such a definition or description of the divide under consideration is absolutely contrary to the actual facts, clearly set forth in the opinion of the Commission and fully confirmed in the plans submitted by it.

The word “ridge” means any protuberance of land of a length greater than its width, such, for instance, as a range or chain of mountains.

The Commission does not allege that the divide runs along a *single ridge*, from its starting point to its termination. Nor does it affirm that this divide runs along a *series of ridges*. The language used by the Commission is obscure and ambiguous when logically considered, because it is not admissible to confuse unity (a ridge) with plurality (a series of ridges). If the divide runs along a *single ridge* it is clear that it cannot, at the same time, even partially run along a *series of ridges*. Nor, if the divide runs along a *series of ridges*, is it possible for it wholly to run along a *single ridge*, independent of the series.

In order that this may be brought out with entire clearness, it is well to observe that it is just as logical to lay down a line along "a ridge or series of ridges" as it would be to assert the equation of one house and a series of houses, of one tree and a series of trees, of one valley and a series of valleys, of one lake and a series of lakes, of one cart and a series of carts;—all for the very simple reason that unity (one) is not equal to plurality (two or more).

If the second part of the equation ("a series of ridges") be asserted, then the first part ("a ridge") is logically excluded, unless it belongs to the series; and *vice versa*.

The uncertain language used by the Commission has the practical disadvantage of producing in the mind of any reader the *illusion* that the line of the divide runs along a single body or mass of earth, which may conceivably be understood by the expression "a ridge or series of ridges."

But in reality the divide does not run along a *ridge* or a *series of ridges*, for the line passes along a heterogenous collection of *parts* of ridges, *portions* of slopes or *flanks* of the latter, and of what the Commission has expressly sought to characterize as "saddles" (depressions between two ridges); whereas the expression "a ridge or series of ridges" neces-

sarily implies the idea that bodies or masses termed "ridges" run, one behind the other and in order, and form like an extended chain a series of bodies arranged in orderly continuation. Moreover it is not correct to call "saddles" the portions of ground that form the connection between one slope and another; they are areas of low lying ground, depressions, independent of the masses ill-termed ridges.

It is not affirmed—nor is it denied—that the line of the divide may be a natural one; but in view of the report of the Commission and of the accompanying plans and documents, it is impossible to admit that the divide is formed by physiographical accidents, such as are indicated in the said description as "a ridge or series of ridges."

The greatly reduced scale used in the profile plans to represent the line of the divide, gives the casual observer the illusion that the divide mentioned is a natural and continuous line, running along over a series of *ridges* that are connected by numerous "saddles." This illusion vanishes if the profile is reproduced on a scale sufficiently large to permit things to be seen in their true light, as has been done in the diagram submitted herewith (Diagram F).

That illusion is also dispelled by the photograph (also submitted herewith, No. 1), which shows that the line of the divide *cuts across* all the secondary cordilleras, which, parallel to the Main Cordillera, rise in the region to the left of the Sixaola River, and descend from considerable heights to the bottoms of the secondary valleys in that region, passing from one cordillera to another.

The assistant engineers who personally went over the ground, state this point very clearly; thus Mr. Harding, in his letter of October 11, 1912, writes:

"Reconnaissance was carried to Camp 11, approximately twenty-three kilometers from Chirripó Grande.

THIS RECONNAISSANCE DEVELOPED THE FACT THAT THE DIVIDE IS NOT A CONTINUOUS SPUR FROM THE MAIN CORDILLERA. IN THE AREA TRAVERSED BY THE DIVIDE THERE ARE HIGH RIDGES PRACTICALLY PARALLEL TO THE CORDILLERA. BETWEEN THESE HIGH RIDGES THERE ARE CONNECTING RIDGES, WHICH ACTUALLY FORM THE DIVIDE."¹

These "connecting ridges," which it is said form the divide, are the same that Mr. Martin, in his letter of October 15, 1912, called "*low, in some cases very narrow connections,*" as appears by the following extract:

"The detached buttresses or spurs of the cordillera to the left of the River Tarire or Sixaola from the mouth of the River Blei up stream to Cerro Chirripó Grande HAVE A GENERALLY NORTHWEST DIRECTION, AND DIVIDE THE WATERS OF THE RIVER TARIRE, and this continuous chain of elevations appears to be a succession of peaks, with steep slopes mostly on the west side and LOW, IN SOME CASES VERY NARROW CONNECTIONS, where the side slopes are abrupt and subject to slides. The *watershed ridge* is well defined from Cerro Chirripó Grande to the headwaters of the Estrella, or North River, in a generally *northeast direction*, at which point the *ridge* dividing the Estrella, or Chirripó, drainage system, turns to the north and northwest, and by an abrupt slope the ridge dividing the waters of the Rivers Tarire and Estrella leaves the aforesaid *ridge* and runs off at first northeast, thence east and southeast, by a *succession of peaks, with very low passes, of the character aforesaid mentioned.*" (Appendix No. 3, p. 15).

¹Harding letter; October 11, 1912. The second sentence here quoted does not appear in Appendix No. 3, p. 17, but is in Mr. Harding's letter in the files of the Commission.

If the detached buttresses or spurs of the cordillera on the left of the Tarire River, from the mouth of the Blei River upstream to Chirripó Grande, have a generally *northwest direction*, and the watershed ridge is well defined from Chirripó Grande to the headwaters of the Estrella, or North River in a generally *northeast direction*, it is perfectly clear that these buttresses, or spurs, *are not a part of the aforesaid watershed from Chirripó Grande to the headwaters of the Estrella, or the North River.* See for a geographic demonstration of this point Diagram G.

In the same way, the engineer, Mr. Ashmead, in his Supplemental Statement, (p. 9), says:

“Of the region from Chirripó Grande eastward, toward Cerro Doble, our engineers say:

“To the NORTHEAST from Chirripó Grande lie a number of ridges PRACTICALLY PARALLEL to the Main Cordillera. *Between these ridges are low summits* dividing the waters of the Sixaola and Chirripó Rivers, the tributaries heading at the summits and *flowing parallel to the ridges.* *This chain of low peaks and low summits* runs generally N. E. and connects with a high range north of the Estrella River.’”¹

From those descriptions it appears that the ridges which present themselves to the observer looking from Chirripó Grande in a northeasterly direction, are practically parallel to the Main Cordillera. As this runs *from northwest to southeast*, that same course is the direction taken by the said ridges. Between those *ridges* there are “low summits” dividing the waters of the Tarire and the Chirripó Rivers. The tributaries take their rise on the said “summits” and run parallel to the *ridges*, that is to say, from northwest to

¹Weakland letter of October 16, 1912; Appendix No. 3, p. 18.

southeast; and the chain of "low peaks and low summits" is the one that forms the divide, its direction being *northeast*. The divide, consequently, runs along a course diametrically opposed to the *ridges*. The hydrographic chain, therefore, *is not formed by the ridges* which rise to the north of the Tarire River.

Finally, the engineer, Mr. Ashmead, at p. 65 of the report of the Commission, positively *denies that the divide runs along a ridge or series of ridges*; his language follows:

"* * * I take exception to the expressions:
* * * the same ridge or series of ridges which to me infer a divide readily followed along a ridge or ridges toward the sea, whereas THE ACTUAL DIVIDE NORTH OF THE SIXAOLA RIVER FOR ITS WHOLE LENGTH, including the digitating branch divides near the sea, is difficult to follow, and PASSES ALONG PARTS OF RIDGES AND ALONG SADDLES BETWEEN RIDGES."

(4) THE FANTASTIC DIVIDE ACROSS PUNTA MONA SWAMP.

With regard to the so-called *divide across the swamp* that goes around Punta Mona, it really ought not to be accorded the honor of a discussion, for nothing that could be said in its condemnation would have the force of what was said by the Commission itself. Here are the very words of the Report of the Commission (p. 53):

"It, therefore, should be understood that there is no actual, permanent, natural divide, nor parting of the waters across Swamp A, and that, as legended on the maps, the line shown on the maps across Swamp A IS A LINE OF HYPOTHETICAL, DIVIDE, ARBITRARILY DRAWN."

Thus it is seen that there does not exist, across the swamp a natural, permanent or actual divide, or any

parting whatever of the waters; so that the line which has been traced over the swamp is nothing more than a *hypothetical and arbitrary line*. It is not possible to use clearer or more categorical language than the above. *The divide does not exist*; its representation on paper has no basis in fact; it is an absolutely arbitrary fiction.

When the Report of the Commission was in preparation, the Engineer, Mr. Ashmead, made a motion for the adoption of the following:

“*Resolved*, that in accordance with the meaning of the word ‘divide,’ as uniformly used in the report of this Commission, and so stated on page 54 of the report, lines indicative of divides shall be drawn on the maps of this Commission *only* along divides which separate surface drainage going to one drainage area from that going to another.”

This motion was rejected, the Commission not wishing to declare that the word “divide” uniformly used in its report, should therein, and on the maps accompanying it, signify a line parting surface waters flowing to one drainage area and other surface waters flowing to another drainage area.

Mr. Ashmead then proposed another analogous motion, into which was introduced, in accepting the word “divide” as an exception for that portion of the line drawn across the Punta Mona Swamp, but under the express and solemn declaration that there is no *actual, permanent and natural divide, or parting of the waters* across the Swamp of Punta Mona, but a *hypothetical divide arbitrarily drawn*. And this motion was adopted, as appears in the Thirty-ninth Session of the Commission of Engineers; Appendix No. 1, pages 287 and 288. The line was traced, but it was traced under the clear and recognized understanding that it was *only an imaginary thing, non-existent*.

What was the object of doing this? It is clear that the purpose was to make a pretense, by a procedure evidently at variance with the truth, *of the continuity of the line, from the point at which it branched off to the shore of the sea.*

In order to give to such an artifice a scientific aspect, the Geologist, Mr. MacDonald, on his part, thought it well to develop the ingenious theory, by which he maintained that the Punta Mona Swamp, in some prehistoric age, was the broad valley of a stream tributary to the Sixaola, and that such valley was sunken during that distant epoch as much as 120 meters, a depth that was later filled in until it was raised to the surface level that is met with to-day. According to that theory, the sunken valley, before it sank, formed an entirety with the elevations that project on either side of the swamp above the surface, *and actually forms such entirety still underneath the 120 meters of accumulations.*

It would naturally be supposed that such a theory would be based on the results of some deep boring; such evidently is not the case for Mr. MacDonald only speaks of an exploration made at Gatún, in the Panama Canal Zone. The hypothesis vanishes in the air; but even assuming it as sound, and admitting that everything occurred as stated, or rather as the geologist imagines it, its logical result would be that away off in those prehistoric times, just as the fact is to-day, across the site now actually occupied by that swamp, *no divide extended, for necessarily the sunken river would have prevented it,* as Mr. MacDonald tells us that it passed along there to mingle its waters with those of the Sixaola.

As Mr. Ashmead observed, very properly, the swamp is not at the present day "a saddle;" nor in view of its

broadness is it reasonable to presume *that it ever was*. If any "saddle" could have existed in that region, the inference must be, in view of the width of the swamp, that it was situated at some place to the north or north-west, at the distant headwaters of the stream that ran through a valley of such latitude. (Supplemental Statement, pp. 26, 27.)

In any event, the Panamanian interpretation of the Award, even taking away the data brought into the discussion by the Report of the Commission of Engineers, would be utterly untenable for many and controlling reasons, among them, the following:

In the first place the Award does not say, nor does it desire, that the frontier line, in its Atlantic section, should be formed by the line separating the waters of the Tarire and Sixaola Rivers and the Estrella, or North River. If it had so desired, it would have so expressed itself, and in positive terms, as it did in the case of the other two sections of the line, when, to convey this idea, it employs clear and unequivocal expressions: "the chain of the watershed between the Atlantic and the Pacific," and "the line of the watershed between the Chiriquí Viejo and the affluents of the Gulf of Dulce," Evidently, therefore, if the Award had so desired, instead of the description it gave for section (a) of the frontier, it would have said, "the frontier * * * shall be formed by the line of the watershed between the Tarire, or Sixaola River and the Estrella, or North River; and thence by the chain," etc. But this is not what the Award said; its idea was entirely different. It sought to clothe in the guise of a frontier a mountain spur that *suppositiously* started from Punta Mona, and, also *suppositiously*, closed on the north the valley (not the basin) of the Tarire and Sixaola Rivers.

Thus, the frontier in its entirety was composed of diversified and irreconcilable elements: one, a counterfort of the character above given, and the other, two lines separating waters. Panama's interpretation, therefore, violates the text of the arbitral sentence and should be rejected. Indeed, that interpretation not only violates the text—converting at will a mountain, or the spur of a mountain, into a line separating the waters of rivers—but it increases, or broadens, the area adjudicated to Colombia in the Award, by transferring the frontier from the line that closes on the north the *valley* of the Tarire River to the line that closes the *basin* or drainage area of that river, which is situated at an enormous distance from the former line, toward the north and within the territory of Costa Rica. If the French Arbitrator had had in mind to grant to Colombia the entire basin or drainage area of that river, he would have so expressed himself, using the word "*basin*" instead of the word "*valley*," which was the word he did use. The error of Panama arises out of two causes: first, the fact that in reality there exists no counterfort which starts from Punta Mona and closes, on the north, the valley of the Sixaola River—in default of which Panama resorted to the line separating the waters between said river and the river immediately north of it; and, second, the false synonymy of the terms *valley* and *basin*, which at times are confounded in careless language.

The erudite study of Professor Miller, of Lehigh University (Doc. No. 585), cited because of the great weight of authority it carries, makes it unnecessary to enter upon an extended elucidation of that misuse of terms; there need be added, merely, a few citations from eminent authors and works of reference by way of corroboration

of the conclusions reached by the distinguished professor above named.

IV. DISTINCTION BETWEEN "VALLEY" AND "BASIN."

(1) WHAT IS UNDERSTOOD BY A "VALLEY."

The numerous texts introduced into Professor Miller's study¹ lead logically to the conclusions adopted by him, to wit,

(a) The *basin* (drainage area) is the *entirety*; the *valley* is but *a part* of the basin. In careful and exact speech these words cannot be admitted as synonyms.

(b) It is, therefore, impossible that the four parts of which a *basin* is formed—"(1) the channel or depression actually occupied by the river, (2) the flat flood plain bordering the stream channel and over which the river spreads in flood season, (3) the steep slopes or cliffs that border the flood plain, and (4) the uplands that have a very gentle slope toward the streams"—could also form a *valley*.

(c) It is beyond doubt that practically every geologist or physiographer questioned on the subject will say that the valley of a stream has for its limit the upper bank of the slope that borders the plain watered by the stream's overflow; or it may be formed by the bed of such stream when there is no adjacent plain watered by the stream's overflow.

(d) The upper levels of the drainage area of a river are not considered to be a part of the principal valley of that river.

¹Geologic evidence for determining the position of the boundary line between the Republic of Costa Rica and Panama, by Benjamin L. Miller, Professor in Geology in Lehigh University (Doc. No. 585).

(e) When there is no plain watered by the stream's overflow, the containing wall of the stream forms the limit of the valley.

(f) The valley and the basin of a river in no way coincide in area, "because while the *basin*, for manifest physical reasons, must be bounded by a culminating line of the respective hydrographic system—a line that is termed by the paper that relates to it the 'water divide or *divortium aquarum*' the *valley* is freer in its periphery, its limit not being necessarily hydrographical but orological, and it is formed by the base line of the mountains that surround it;" therefore, it is incorrect to say that the boundary line marked out by the limit of the valley is identical with the limit of the basin.

(g) The valleys of the tributary rivers or streams may never be included in the area of the principal valley, excepting those small parts of them that actually and effectively fall within the principal valley where they *unite with* the master current.

A valley is the area included between the lines of hills or mountains; the strip of land at the bottom of the depressions that cut into a country and which ordinarily contain the bed of a stream, with broad alluvial plains frequently stretching away on one or both sides of the stream. A deep, narrow valley the sides of which are abrupt, is called a *gorge*; and if it makes a deep cut through mountain ridges, or has a rushing mountain torrent along its bottom, it is called a *cañon*. (Webster's Dictionary; the word *Valley*).

Geologically the valley and the mountain are the two essential constituent elements or terrestrial morphology, the valley representing the tendency of the earth's surface toward horizontality, to which tendency is contributed

the greatest number of causes that affect the earth; it may be defined as a depressed area confined between two hills, mountains or elevations, and toward which flow the waters of the surrounding country. (*Diccionario Enciclopédico Hispano-Americano*; the word "Valle.")

Vallées (Valleys).—Spaces between two or more mountains. "To descend into the valley." (French Academy, Dict.)¹

Vallées (Valleys).—The low areas found between two or more mountains. "The valley of Chamounix." (*id.*)²

Vallée (Valley).—One sees in the valley only the low-lying land, bounded by mountains and usually furrowed by a watercourse * * * (Larousse, Dict.)³

Vallée (Valley).—A space located between two mountains or chains of mountains. A depressed area of ground along the course of a stream or river. "The valley of the Rhône." (Larousse, Dict.)⁴

Vallée (Valley).—As the basin of a stream embraces not only the valley which the stream itself traverses, but also the valleys of its tributaries and those of the affluents of such tributaries, and as each one of these valleys may be considered as a special basin, the fluvial basins are distinguished by several classes * * * (Larousse, Dict.)⁵

¹*Espace entre deux ou plusieurs montagnes. Descendre dans la vallée.*

²*Fond qui se trouve entre deux ou plusieurs montagnes. La vallée de Chamounix.*

³*On ne voit dans la vallée qu'une terre basse limitée par des montagnes, ordinairement sillonnée par un cours d'eau * * *.*

⁴*Espace situé entre deux montagnes, ou deux chaînes de montagnes. * * * Terrain déprimé qui suit le cours d'un fleuve ou d'une rivière. La vallée du Rhône.*

⁵*Comme le bassin d'un fleuve ne comprend pas seulement la vallée que traverse le fleuve lui-même, mais encore les vallées de ses affluents et celles des affluents de ses affluents, et que chacune de ces vallées peut être considérée comme un bassin particulier, on distingue les bassins fluviaux en plusieurs classes * * *.*

"The mountains on the left * * * send down spurs toward the river *between which are pretty little valleys*, not deep and narrow but spread out like a fan." (Herndon, *The Valley of the Amazon*, p. 125.)

"The mouths of the *lateral valleys* are not usually accordant. They do not lie at the level of the floor of the *main valley*, but lie at a higher level. The rivers often tumble down in waterfalls to join the *master river*, or they have cut into the floor of the *lateral valleys* a deep gorge, through which they swirl and rush to reach the bottom of the *main valley*. These are the very well-known 'Klammern' of the eastern Alps and the gorges of the western Alps, and many waterfalls of this mountain chain lie at the mouths of *side valleys*.

"The cross-sections of our Alpine valleys are also other than what one might expect. The *master valleys* have in general an extended flat bottom, at the sides of which rise very steep walls. The heights at which the *side valleys* terminate above the *main valley* show a very regular arrangement. * * * Earth movements which could reverse the slope curve of a *master river* must also affect its branches. * * * Lakes formed by the subsidence of part of a river valley must digitate into the *side valleys*. Contrary to this, the *side valleys* of the great Alpine lakes are not submerged at all. The digitations we find now and then in Alpine lakes have nothing to do with the submerging of true *lateral valleys*; they do not stretch toward the mountains from which the *side valleys* come, but extend in the opposite direction. They are related to the frequent valley *bifurcations* which will be considered later. * * * The trough bears every evidence of being eroded in a former *river basin*, the *side branches* of which suffered less lowering than the *main branch*. This fact is now generally admitted by all who have studied the relations be-

tween the *high-hanging valleys* and the *main valleys*.
* * *¹

Dr. William M. Gabb says:

"In all that part of the region beyond the Tiliri River the swamp region reaches to the hills; but in the center of Talamanca, on the Tiliri, around the mouths of its principal branches, there is a broad area, say 100 to 150 square miles of nearly level land. This extends a few miles up the Urén, Lari, Coén and the upper Tiliri, and down as far as Sibouwe, there narrowing, however, to a simple river valley."²

From all the foregoing citations it may be gathered that by a "valley" there is only to be understood the low area of land lying between mountains. It forms the bottom of the depressions, representing the horizontal tendency of the surface of the ground; it is either main or lateral. Therefore, one descends from the mountain into the valley and climbs up from the valley onto the mountain, so that the one term is the antithesis of the other.

In the geological report of Mr. MacDonald (p. 31) the following passage appears:

"The Sixaola valley here has been restricted by erodable rocks. Just below here it widens out into what may be called the lower Sixaola Valley, and above here into the wide flat upper Sixaola or *Talamanca Valley*."

¹*The Valleys and Lakes of the Alps*, by Aldrecht Penck, Vienna, Austria, in the Report of the Eighth International Geographical Congress, held in the United States, 1904, Doc. No. 460, 58th Congress, 3d Session, House of Representatives.

²Dr. William M. Gabb, *Report on the Talamanca Exploration*, p. 99 (Doc. No. 582).

The writer refers to two great dikes of hornblende that wall in the Sixaola River, at the place called Piedra Grande, on either side of that stream. These rocks *constrict the valley* of the Sixaola by their bluff formation. The valley at this place has just the width that lies between one rock and the other, as appears drawn by the engineer, Señor Matamoros on the sheets that represent the transverse sections Nos. 9-A, 9-B and 9-C, showing the closing line (on the north) of the Valley of the Sixaola River.¹ It is clear that the Valley of the Sixaola, being constricted by these rocks, as Mr. MacDonald definitely states—and with good reason—it is nonsense to carry forward the valley and its northern boundary to the line that marks on the respective map the northern limit of the drainage area of the Sixaola River, distant 6,667 meters from the closing line of the valley. This view of the *constriction* of the valley, as indicated, is confirmed by its author at the places in his report from which the following citations are made:

"* * * Now, this *restriction of the Sixaola Valley* could not be caused by * * *.² The chief factor in the *restriction of the Valley* here then is undoubtedly * * *."³

"* * * the faulting or the system of dikes as found at Piedra Grande is sufficient to account for the division of this valley into a wide upper and a wide lower part, with a *restricted waist-like part of the valley* between them."⁴

¹ Report submitted to the Representative of Costa Rica by Luis Matamoros, pp. 39, 40, 41.

² Report of the Geologist, p. 31.

³ *Ibid.*, p. 31.

⁴ *Ibid.*, p. 46.

That the valley of the Sixaola River has as a matter of fact an area much less than its basin is evident, in view of what was said in a letter, inserted in the Appendix, No. 3, p. 6, dated February 23, 1912, in which the engineer, Mr. Howard, says:

"I found that there are several precipitous ridges on the southerly side of the main divide, that have no direct connection with it * * * The country between our main divide and the Sixaola River is not a gradual slope similar to that at the Cuabre trail, but is up hill and down." "* * * *There is a long ridge between the divide and the river.* * * *" (p. 8.)

This same datum was again stated by Engineer Howard in letters of May 21 and 30, June 6 and 30, and July 8, 1912, cited at pp. 8 and 9 of the Appendix mentioned.

In the report of the majority of the Commission (p. 34), the following statement was made:

"During the progress of its surveys, Party C found several points at which it was possible from its traverse line to see *much of the Talamanca Valley* and of the Main Cordillera to the southwestward. Such opportunities were utilized by observing horizontal directions and vertical angles to many points, especially the summits on the Main Cordillera and on the slopes from the Main Cordillera toward *the Talamanca Valley.*"

Party C ran the line of the divide north of the drainage area of the Sixaola River, from the headwaters of the Shioli River toward the west; and no one who reads the extract above given can fail to comprehend the clear differentiation that is there made between the land that was gone over (the divide north of the basin of the Sixaola) and the *Valley of Talamanca*. Necessarily, one area was separate and distant from the other.

The very same thing happened when the following paragraph was written in the Report of the Commission (p. 45):

"On February 14 Mr. Hayford visited Party A, and with Assistant Engineer F. L. Weakland went along the divide which is the north limit of the drainage area of the Sixaola River, from a point nearly north of the Sanchez Headquarters to the point known as Buena Vista, from which a view was obtained northwestward to the Caribbean Sea, eastward to various hilltops nearly to Punta Mona, and south-eastward down the *valley of the Sixaola River*."

From Buena Vista a panoramic view was obtained of the sea, of the various eminences toward Punta Mona and of the *valley of the Sixaola River*. No one reading that could possibly confuse or identify the region of Buena Vista, on the one hand, and the sea, the hilltops toward Punta Mona and the Sixaola Valley, on the other hand, for it was clearly brought out that each one of these separate objects was essentially distinct from that of the above mentioned view-point.

At another place in the Report of the Commission just cited (p. 37), the following appears:

"Party C extended a continuous triangulation from Primo to Buenas on the Main Cordillera * * * ; secured closely controlled topography * * * ; and secured measured directions and vertical angles to many peaks on the Main Cordillera from Pico Blanco to Durika, inclusive, and to many other summits, especially on the slopes *toward the Talamanca Valley*."

It is impossible for any one reading the foregoing to say that the *Valley of Talamanca* extends to the height which served as the view point, or to the peaks and watersheds embraced between, notwithstanding said view-point and

the peaks indicated constituted the borders of the drainage area within which was included the quite restricted area of the valley mentioned.

In the report cited (p. 46), it was stated:

“The day being clear and the view unobstructed, the Main Cordillera from Pico Blanco to Durika was clearly visible, and much of the *Talamanca Valley* and of the various ridges extending from the Main Cordillera toward the Sixaola River, between the branches of the Sixaola River.”

It is not possible to confuse the view-point C-100 and C-1 with the *Valley of Talamanca* and the regions of the Sixaola River.

The same Commission also stated in its report (p. 52):

“On the southerly side of the Sixaola River, in the *valleys of the large branches*, Uren, Lari and Coen, there are tracts of flat productive land.”

The Sixaola Valley, on one side, and the valleys of the Urén, the Lari and the Coén on the other, are entities absolutely distinct and cannot be mixed up, and at the same time are distinct from the general basin of the Sixaola River.

The Commission of Engineers, in its report (p. 51) says:

“Broadly speaking, the small area drained by these streams would in general be understood as included when speaking of the Valley of the Sixaola, **ALTHOUGH TECHNICALLY THEY ARE INDEPENDENT VALLEYS.**”

The small streams spoken of by the Commission are the rivers and creeks that flow directly into the sea, and various tributaries of the Sixaola.

If the closing line of the Valley of the Tarire or Sixaola River on the south was the question to be determined, who would think of carrying that closing line to Pico Blanco, Cruz del Obispo, Durika and Chirripó—or to the summits of the ridge that separates the basins of the Tarire and Changuinola? It is clear that for the boundary of the valley the foot of the said mountains would be taken; and the same thing would happen when the valley is limited on the north by the mountains that close the valley on that side.

Finally, Mr. MacDonald, the geologist of the Commission of Engineers, in his report (p. 24), expresses himself in the following way:

“* * * This introduced a sharp distinction *between the Sixaola Valley proper and the present Sixaola drainage area.*”

In accord with the distinction between main and secondary valleys, Ambassador Bryce, in his important work entitled “South America,” page 21, referring to the Panama Canal, writes:

“The lake will fill not only the VALLEY OF THE CHAGRES ITSELF, but *the bottom of its tributary valleys* to the east and west; so that it will cover 164 square miles in all and will be dotted by many islands.”

(2) WHAT IS UNDERSTOOD BY A “BASIN.”

Basin—In geology and hydrography a depression of the earth's surface or of the strata constituting the crust of the earth; *also the drainage area of a river system.*

The basin of a river when considered hydrographically, consists of the entire area drained by the main stream and its tributaries. (The New International Encyclopedia, Vol. 2, p. 574.)

Bassin (Basin).—The basin of a stream; the area left between two ranges of mountains or hills, through which a stream flows, from its source to its outlet. * * * (French Academy.)¹

Bassin (Basin).—8. Geographical term. A place at the bottom through which a stream flows, having all its watersheds directed toward this stream. "The basin (*bassin*) of the Seine * * *." (French Academy.)²

Bassin (Basin).—2. Geography. Basin of a stream; the territory watered by a stream, with all its affluents * * *. (Hartzfeldt-Darmesteter: Dict., p. 206.)³

Bassin (Basin).—Hydrography. Ground occupied by a sea or a pond * * *. The whole of the lands watered by a stream that flows into the sea: "The basin of the Black Sea." The system formed by a river and all its direct and indirect affluents. "The basin of the Rhine." (Larousse, Dict.)⁴

Bassin (Basin).—The basin of a stream is the name given to the whole of the territory from which all the water flows into this stream, from all sides. Except on the part toward the sea, the basin is surrounded by a series of elevations which are termed

¹*Le bassin d'un fleuve, l'espace réservé entre deux suites de montagnes ou de collines, dans lequel coule un fleuve, depuis sa source jusqu'à son embouchure.*

²*Terme de géographie. Espace au fond duquel coule un fleuve et dont toutes les pentes sont dirigées vers ce fleuve. Le bassin de la Seine.*

³*Géographie. Bassin d'un fleuve; territoire qu'arrose un fleuve avec tous ses affluents.*

⁴*Terrain occupé par une mer ou un étang. * * * Ensemble de terres arrosées par les cours d'eau qui se jettent dans une mer; le bassin de la mer noire. Réseau formé par un cours d'eau et l'ensemble de tous ses affluents directs ou indirects: le bassin du Rhin.*

the water divide and which separates the neighboring basins from one another. (Larousse, Dict.)¹

Cuenca (Spanish Basin).—The conjunction of all the valleys traversed by a river and its tributaries of the first, second or third class, etc., constitutes what is called a basin. (Bertrand: *Demarcación de límites*. Appendix p. 1. A topographical extract by the Army Colonel, Julián Suárez Inclán. Madrid, 1879).

Bassin (Basin). * * * all the surface of the earth is divided into basins, adjoining one another, and separated by a culminating line that is called the division line of the waters. (Larousse, Dict.)²

The engineer of Panama, Mr. Hodgdon, in his Supplemental Statement (p. 6), carefully differentiates between a *valley* and a *basin*. He uses the following language:

"IT WILL BE NOTICED THAT THE AWARD STATES THAT THE SPUR OR COUNTERFORT OF THE CORDILLERA ENCLOSES ON THE NORTH NOT THE DRAINAGE AREA OF THE SIXAOLA RIVER, BUT 'THE VALLEY OF THE TARIRE OR SIXOLA RIVER.'"

It would seem that the following opinions, which are found in the treatise entitled: *Nueva Geografía de Colombia* by Señor Francisco Javier Vergara y Velasco, (Bogotá, 1901), must have been written with the present case in mind:

¹*On nomme bassin d'un fleuve l'ensemble des territoires dont toutes les eaux viennent se jeter dans ce fleuve, de tous côtés. Excepté du côté de la mer le bassin est entouré d'une série de hauteurs qu'on appelle ligne du partage des eaux et qui les sépare des bassins qui l'avoisinent.*

²* * * *Toute la surface de la terre se trouve divisée en bassins adossés les uns aux autres et séparés par une ligne culminante qu'on appelle ligne du partage des eaux.*

"The old geographical theory of hydrographic basins was prolific in errors and for many years has been ignominiously rejected by Europeans * * * The first result of this erroneous theory was to induce the belief that where a parting line of waters is sought it coincides with that of the summits of a cordillera or crest of a mountainous ridge and forms only one with it. The second, still more erroneous, was that where was a parting of waters, there also a cordillera must exist. From such ideas, certainly well adapted to avoid investigations and labor, arose the craze for filling up territories with mountain ranges that had no existence save in the imagination of the authors of handbooks of geography.

"To this series of errors may be opposed the following:

"1. *A cordillera, although elevated, does not necessarily become part of a water divide.* Very often a real mountain that rises from the midst of low plains does not become any divisional line of waters: as, for example, the Hartz. In Colombia may be cited Torra, Galera, Tolma, etc. Under this aspect of things, prominent peaks that dominate the topography of a district, would be classified as fortuitous accessories of its relief.

"2. *The line of summits and the divisional line of waters do not necessarily coincide.* Indeed, it is a common thing that these two lines do not coincide, as happens in the Alps and in the Pyrénées. Ordinarily the culminating peaks are left outside of the divisional line of waters, which runs along lower ridges, as for example Monte Perdido in the Pyrénées. Neither is it rare to find that the divisional line passes over a plain, at the foot of a cordillera, as happens in the Carpathians. In Colombia there may be cited, in the first case, the snow-clad peak of Sumapaz and the peaks of Mina and Ocaña; in the second case, the tableland of Jeridas in the Lebrijal.

"3. *Divisional lines of waters exist where there are no cordilleras nor mountains* There are upon the earth's surface very extended areas where divisional lines of waters are found and without any cordilleras. This occurs even between large rivers and midway between great cordilleras. Examples are: the divisional line between the Rhine and the Danube, to the north of Lake Constance, and the high plains (Uwalli) of Poland. Nor is it rare for a river to rise in a region having a certain altitude and seek its outlet to the sea across the highest reliefs, by narrow passes or deep valleys, as happens with the Zorn in the Vosges, etc. In Colombia good examples of the first case are the divisional lines between the San Juan and the Atrato and between the César and the Ranchería. In the second case, the Minero, because the crags of Yacopi hardly exceed 1400 meters, while the peak of Panarmada goes above 3000."

V. EVEN SUPPOSING THE EXISTENCE OF THE PUNTA MONA SPUR, THE PANAMANIAN INTERPRETATION OF THE AWARD IS NOT ADMISSIBLE.

(1) IT WOULD GO BEYOND THE LIMITS OF THE TERRITORY IN DISPUTE.

The non-existence of the counterfort designated by the Award to serve as the frontier on the Atlantic side, is now an incontestable fact; but, supposing for sake of argument that such a counterfort really did exist, and that it extended from Punta Mona to the range separating the waters flowing into the two oceans; even then the Panamanian interpretation could have no better success, and for a very evident and convincing reason, which Panama accepts and acknowledges, to-wit, that under that hypothesis the frontier line represented by the counterfort

referred to, would overstep the limits of the territory in litigation and trespass upon undisputed Costa Rican country as to which the Arbitrator was wholly lacking in jurisdiction. The demonstration of this truth is so simple that a mere glance at the plan of the controversy will make it impossible to take shelter behind even the slightest doubt.

In another section of this Argument attention has been called to the fact that the line of demarcation of Colombia's demand was so traced as to invade in its entirety—throughout its whole length—lands that were not involved in the controversy pending between the two countries. That line was illegal and wholly outside the scope of the litigation. The limit of the controversy was marked by a line that ran much farther to the east than Señor Silvela's line. But, acknowledging for the moment that the first mentioned line was valid, it would have to be admitted that the Award, when interpreted according to Panama's desires, would overstep enormously the mathematical boundary proposed in the demand. This, in its point of intersection with the Tarire River, has for its geographical coordinates $9^{\circ} 33'$ of north latitude and $83^{\circ} 8' 30''$ of longitude west of Greenwich, and the angle land mark, or point at which the line that starts from Punta Mona cuts across the line separating the waters flowing into the two oceans, has for its coordinates, according to the Commission of Engineers, $83^{\circ} 29' 38''$ longitude west of Greenwich and $9^{\circ} 29' 28''$ north latitude. The point at which the Silvela line cuts the Main Cordillera, on Pittier's map (apparently the most nearly exact of all existing maps of that region) is fixed at $9^{\circ} 14' 40''$ north latitude and $83^{\circ} 8' 30''$ longitude west of Greenwich. Now the intersection of Silvela's line and the parallel of Punta Mona, which, it may be assumed, represents the divide north of the Tarire River,

is at $9^{\circ} 38' 20''$ and $83^{\circ} 12' 10''$. These four points determine the quadrilateral shown on the Diagram H, bounded as follows: on the north, south and west by territory respected in the Loubet Award as Costa Rican, and on the east by Costa Rican territory which was embraced within Colombia's invasive demand, although not involved in the dispute or submitted in the Conventions of 1880, 1886 or 1896. This quadrilateral encloses an area every square meter of which is Costa Rican territory expressly excluded from the encroaching and baseless demand of Colombia.

It should be noted that the Silvela line has been drawn in this diagram as starting from the true meridian of the Golfito River's mouth, which is $83^{\circ} 8' 30''$ west of Greenwich; not as of the meridian of Punta Golfito, erroneously adopted by Señor Silvela ($83^{\circ} 11' 18''$ west of Greenwich).

But the rights of Costa Rica have been ignored and belittled to an extent much greater than heretofore indicated; because the Silvela line was illegitimate in view of the fact that neither of the parties could, at the time of formulating its demand in the proceeding, legally widen the area comprised in the dispute when it was submitted to arbitration. The boundaries of the contested territory were much more restricted, as has been shown elsewhere. The interior valley of Talamanca did not enter into the controversy; nor did the lands lying on the left bank of the Tarire and Sixaola, from its source to the sea. If, then, it is taken into consideration that, according to Panama's interpretation, the Award adjudicated to Colombia lands, on the left bank of the Tarire and Sixaola, which Panama now seeks to have extended as far as the line separating the waters of these rivers and the Estrella (or North River); and if the fact is also taken into account that, according to

Panama's evident understanding of the Award, the interior valley of Talamanca enters into the aggregate of lands adjudicated to Colombia, it is clearly evident that, in this event, the Award becomes vitiated by the defect which the Arbitrator himself, through his Minister, Monsieur Delcassé, ordered to be cured by retiring the frontier line so that it might not in any degree overstep the limits of the dispute.

This is what the Convention of Washington sought to accomplish, and with the full assent of Panama, through her duly accredited representative, who repeatedly acknowledged the juridical necessity of limiting the operation of the Award in such manner that its dispositions might not, in any instance, overstep the maximum limit of Colombia's claim.

(2) THE NOTORIOUS INJUSTICE AND POLITICAL INCONVENIENCE OF THE PANAMANIAN INTERPRETATION.

After what has been set forth the notorious injustice of the Panamanian interpretation stands forth in a strong light, and the Honorable the Chief Justice is under no conceivable obligation to accept it, even though it be better adapted to the text of the Award than any other, because the interpretation of the Chief Justice must be correct; that is, his must be a decision free from error and in accord with the intent of President Loubet, whose only desire was to avoid error and injustice, and who sought inspiration in the principles of law and historical precedents—in the true application of the colonial *uti possidetis*, and in the fact of possession.

Panama's interpretation itself, as stated by Señor Porras at the Conference of Washington, in 1910 (Doc. No.469), made it a condition that the line "WILL IN NO WAY GO

BEYOND COLOMBIA'S MAXIMUM CLAIM," and as has already been shown, that interpretation oversteps this maximum claim, and the Award is vitiated by the defect of *ultra petita*, which is enough to warrant the declaration of its nullity.

The intention of President Loubet was to adhere to the historical precedents, to the colonial *uti possidetis* and to the fact of present possession, and there is no precedent whatsoever, either ancient or modern, that can be cited as evidence of ownership or possession by Colombia of the said angle of the Loubet Award. It is, therefore, morally and legally impossible to establish, as a part of the frontier, a line based on geographical errors, that would take from Costa Rica a territory OF WHICH SHE HAS BEEN IN LEGAL POSSESSION FOR THREE CENTURIES.

There is, then, a three-fold bar—physical, moral and juridical—to the acceptance of the line determined by the indication of the supposititious counterfort, spur or buttress that starts from Punta Mona. And as it was also the intention of President Loubet to abide by the *principles of law*, it may not be inappropriate to quote the two following principles laid down by the Digest of Roman Law (Title XVII, Book 50), which law is accepted universally as the very embodiment of reason.

"That which is *impossible of performance* or, in the nature of things, *non-existent*, is held *not to have been expressed*." (*Ea, quae dari impossibilia sunt, vel quae in rerum natura non sunt, pro non adiectis habentur.* No. 135.)

"No obligation attaches to impossibilities." (*Impossibilium nulla obligatio est.* No. 185.)

Consequently, holding as *not expressed*, the impossibilities of President Loubet's Award, and there being no obligation to accept them, the question arises, how can its

deficiency be made up? This it will be attempted to show in the next chapter.

Before doing so, however, it must be added that, even were the line of Panama's interpretation possible, it presents very grave objections in addition to legal difficulties, for the Costa Ricans hold, and with good reason, that their legitimate rights, in general, have been greatly impaired by President Loubet's Award, and their sense of justice has always been outraged by seeing the very heart of their state (the important towns surrounding their capital) menaced by what they have learned to call the "Dagger of the Award."

CHAPTER VII.

DEFENSE OF THE SIXAOLA-YORQUÍN LINE.

I. COSTA RICAN INTERPRETATION OF THE AWARD.

- (1) NOTE OF SEÑOR PERALTA TO MINISTER DELCASSÉ.
- (2) PETITIONS OF COSTA RICA IN THE PRESENT ARBITRATION.

II. FIRST PART OF THE LINE; FROM THE MOUTH OF THE SIXAOLA FOLLOWING THE RIVER COURSE TO ITS JUNCTION WITH THE YORQUÍN.

- (1) THE EQUIVOQUE AS TO THE CULEBRAS RIVER; THE PRISTINE ACCEPTATION OF THAT NAME.
- (2) THE COLOMBIA CLAIMS NEVER WENT BEYOND THE RIGHT BANK OF THE SIXAOLA, EVEN APPLYING TO THIS RIVER THE NAMES OF CULEBRAS AND DORACES, AS SHOWN BY THE HISTORY OF THE TREATIES.
- (3) OFFICIAL DECLARATION OF COLOMBIA THAT THE SIXAOLA RIVER WAS CALLED BY HER DORACES AND DORADOS AND CULEBRAS.
- (4) THE LINE RESULTING FROM THE TREATIES IN ACCORD WITH THE MUTUAL UNDERSTANDING OF BOTH PARTIES.
- (5) THE LINE OF THE TILORIO OR CHANGUINOLA.

I. COSTA RICAN INTERPRETATION OF THE AWARD.

(1) NOTE OF SEÑOR PERALTA TO MINISTER DELCASSÉ.

As soon as he was notified of the Award of President Loubet, Señor Peralta, the Costa Rican Minister Plenipotentiary, addressed at Paris, a note under date of the 29th of September, 1900, to Monsieur Delcassé, Minister of Foreign Affairs of the French Republic (Doc. No. 418), in which he stated that, desiring to avoid all possible confusion in regard to the intent of His Excellency the President, in his Award of the 11th of that month, he respectfully *recurred* to the subject in order to make clear that his government interpreted the first paragraph of the disposing part of the Award in the following manner:

“The frontier between the Republics of Colombia and Costa Rica shall be formed by the counterfort (contrefort) of the mountain range which begins at Punta Mona, in the Atlantic Ocean, and which closes on the north the valley of the River Tarire or Sixaola, near its mouth; it shall run in a southwest-west direction on the left bank of that river to its conjunction with the River Yurquín or Zhorquín (also called Sixaola, Culebras or Dorados) toward longitude $82^{\circ} 50'$ west of Greenwich, longitude $85^{\circ} 10'$ west of Paris, and latitude $9^{\circ} 33'$ north. Here the boundary will cut the thalweg of the Tarire on the left bank of the Yurquín and continue due south along the divide of the watersheds of the Yurquín on the east and the Urén on the west; then along the divide of the Atlantic and Pacific watersheds, until near the ninth parallel of latitude north; it shall continue then along the divide between the Chiriquí Viejo and the streams flowing into the Golfo Dulce to terminate at Punta Burica.”

The note fixed by meridians of latitude and parallels of longitude, the location of Punta Mona and Punta

Burica, and the point of intersection of the frontier line with the ninth parallel, at the meridian corresponding to $82^{\circ} 45'$ of longitude west of Greenwich, or $85^{\circ} 5'$ west of Paris:

"This *interpretation*," the note goes on to say, "conforms with the evident meaning of the Award and with the topography of the territory as well as with the terms of the *compromis* for arbitration. It responds perfectly to the wish of establishing with certainty and stability a *natural* frontier, and it deviates but slightly from a *straight* line traced between Punta Mona and Punta Burica, which is, so to say, the *fundamental* idea of the Award."

Señor Peralta concluded with an expression of the hope that this interpretation might be accepted by the Arbitrator, and with the prayer that it be confirmed by an explanatory act.

The reply to that note, and to two letters supporting it, was the note of Minister Delcassé, so often referred to, in which the Arbitrator recognized the deficiencies of his Award and committed it to the good will of the parties to supply what it lacked, without overstepping the extreme limits of the territory in dispute.

This did not constitute an acceptance by the Arbitrator of Señor Peralta's interpretation; neither was it a denial that the interpretation might come within the terms of the Award. Such a denial the Arbitrator would have been quick to make had that interpretation been contrary to the intent attributed to him. As the Digest reminds us, in title XVII of Book 50, above cited, in setting forth the rules of juridical interpretation, "he who stands silent, certainly cannot be held as confessing; but it is also certain that *he does not deny*." (*Quid tacet, non utique fatetur; sed tamen verum est, eum non negare.* No. 142.) The Arbi-

trator not only did not deny, but even went so far as to acknowledge the possibility of having been in error as a result of the lack of exact geographical data. From this it may be justly inferred that he admitted the rectification proposed.

The Government of Costa Rica informed the Colombian Government of the contents of both notes on the 27th of July, 1901 (Doc. No. 427), in order to make known its interpretation of the Award, and the latter made no refutation of that interpretation. The matter remained in suspense until, the Republic of Panama established, the negotiation of the Pacheco-Guardia Treaty of 1905 was undertaken; and therein, it may be said, the Peralta interpretation was accepted. That it was not formally confirmed was due to the divergencies with respect to the southern part of the frontier in relation to the partition of the Pacific islands.

(2) PETITIONS OF COSTA RICA IN THE PRESENT ARBITRATION.

The Costa Rican Minister, Señor Anderson, declared at the Conference of Washington, which was held on February 14, 1910 (Doc. No. 469), at the Department of State, that the interpretation submitted by his government to the Arbitrator "was the expression of the *sacrifice* which Costa Rica was ready to make in order to bring an end to the question, declining to make any claim against the Award." Señor Peralta tried to make his note conform as exactly as possible with the form in which the text was drafted, in order to avoid confusion in the mind of President Loubet; thus he began by saying that the frontier would be formed by the counterfort of the mountain range which starts from Punta Mona and closes on the north the *valley* of the Tarire River.

But after Señor Peralta's note was written certain facts developed that permitted and, indeed, forced, Costa Rica to modify the interpretation she made at that time. In the first place the uselessness of the excessive sacrifice made in order to settle the question; after that the spirited protest of Costa Rican public opinion that called for the nullification of the Award, and the efforts of the Mediator to bring about a basis for agreement by giving Panama to understand that as the question then stood, *it could not be resolved by a mere interpretation*; then, there were the means proposed by the Honorable Secretary Knox, by which he succeeded in effecting that agreement, the broad scope of the powers bestowed on the Chief Justice by the Convention of Washington, and, finally, the results of the expert survey of the territory made as an incident of the present arbitration, which bring to light the existence of a material error in the Award of such magnitude as to justify its annulment.

In accordance with these full powers enjoyed by the Chief Justice, and in view of the fact that he is called upon to decide the pending boundary question according to the intent of President Loubet, who had undertaken to decide it in the light of the principles of law, the historical precedents and the colonial *uti possidetis*, Costa Rica would now be entitled to go back of the entire case covered by the Award and lay claim to the vast territory which she possessed, in fact and law, at the time of her emancipation and her recognition as an independent State; that is, from the true Culebras River, opposite the Escudo de Veragua, as far as the other (and false) Culebras of which the Colombian Senate spoke in formulating its Conclusions of 1880.

But Costa Rica does not go that far. Believing that President Loubet's intention was to establish as the divisional line the *Culebras* River claimed by Colombia, she

prays the Honorable the Chief Justice for one of the two following interpretations that correspond in the two acceptations in which the name Culebras may be taken—laying aside the pristine and true acceptation—whether it is applied to the Changuinola or to the Sixaola.

First, Costa Rica, in the belief that it is the most just and equitable, and most in accord with the antecedents of the case, asks for a line which, starting at the outlet of the *Tilorio* or *Changuinola* River in the Atlantic, follows along the channel of that river, up stream to its source nearest to Cerro Pando; and thence to the Main Cordillera and along the same to the point near the ninth degree of North Latitude in the proximity of Cerro Pando agreed to as the terminal of the boundary line on the Pacific side.

In the event that the Chief Justice does not agree to this, then, as an alternative prayer, Costa Rica asks for the following line: Starting at the outlet of the Sixaola River and following the channel of that river until it meets the Yorquín; thence along the latter river to its source; thence along the divide between the waters of said Yorquín and other waters flowing to the Tarire on one side and the Changuinola on the other, to the Main Cordillera and along the same to the point near the ninth degree of North Latitude in the proximity of Cerro Pando above mentioned.

As the basis of this prayer the *maximum claim* of Colombia is taken and since the line that most nearly approximates that claim—if, indeed it does not coincide with it—is the one asked for in the alternative prayer, that line will be discussed first and, afterwards at a more opportune point in this Argument, the reason will be shown for the preference of the line of the first choice. This course will avoid repetitions and afford an easier means of comparison.

For greater clearness in this defense, the line will be treated as being divided into two parts: (1) From the

mouth of the Sixaola, along the course of that river, to its confluence with the Yorquín; and (2) from that confluence with the Yorquín, along the waters of that river, to Cerro Pando.

II. FIRST PART OF THE LINE; FROM THE MOUTH OF THE SIXAOLA FOLLOWING THE RIVER COURSE TO ITS JUNCTION WITH THE YORQUÍN.

(1) THE EQUIVOQUE AS TO THE CULEBRAS RIVER; THE PRISTINE ACCEPTATION OF THE RIVER'S NAME.

The First Conclusion of the Colombian Senate, of 1880, established as the first part of the maximum line claimed by that Republic, as far as it affected the interior boundaries between the two seas, and running from the Atlantic, the line which started from the mouth of the *Culebras* River and followed along the upper waters of that river to its source.

During the arbitral proceeding before President Loubet, Colombia did not take the trouble to explain that she had a different conception of the *Culebras* River from that of Costa Rica, who claimed that river as her legal, historical and possessory boundary, recognized by the Treaty of 1825, because Colombia's only concern was to show that she had a right to all the territory of Costa Rica. In so doing she made use of two geographical *equivokes*: that concerning the name of "Veragua," which name she applied to the original province extending to Gracias a Dios, and that relating to the "Mosquito Coast," which she extended beyond Punta Gorda.

Furthermore, the name of *Culebras* given to the river is another *equivoke* of which Colombia has availed herself in justification of her progressive invasions upon Costa

Rican territory. In this instance she has, as the whim struck her, successively translated the river, whose mouth marked the common boundary, to a greater distance from the original of that name, and has thereby led into error those who had to weigh the historical and legal reality.

The first acceptance of the name "Culebras" is that which applies to the Chiriquí, or Calobébora River, situated to the east of the Chiriquí Lagoon and opposite the Escudo de Veragua, according to the maps published during the years 1630 to 1695 by William Blaeu, Hendrick Doncker, Jacob Colom, Frederic de Witt, Oexmelin and John Van Keulen (Maps I, II, III, IV, V, VI). And this is the only acceptance ever used by Costa Rica; it is the same acceptance of this river—as her boundary on the Atlantic—what she has always maintained in the diplomatic negotiations, and what she asked for in the arbitral proceeding before President Loubet.

The boundary question having been established on the basis of Spanish colonial law, as presented and discussed before President Loubet, there was no other solution than that of the Culebras, Chiriquí, or Calobébora River, or that of the western meridian of the ancient Dukedom of Veragua, because of the fact that Colombia had invoked the Royal *cédula* of 1537 as almost her only ground of defense (Doc. No. 13). This is made abundantly clear by the Spanish jurisconsults, Señores Moret and Santa-maría de Paredes in their opinion embodied in this Argument.¹

¹Opinion concerning the question of boundaries between the Republics of Costa Rica and Panama, pp. 179-185.

- (2) COLOMBIA'S CLAIMS NEVER WENT BEYOND THE RIGHT BANK OF THE SIXAOLA, EVEN APPLYING TO THIS RIVER THE NAMES OF CULEBRAS AND DORACES, AS SHOWN BY THE HISTORY OF THE TREATIES.

The history of the relations between Costa Rica and Colombia, and of all their attempts to settle the boundary question by international treaties, show that the latter Republic never sought to pass the right bank of the Sixaola, even under the pretense of applying to that river the names of "Culebras" and "Doraces," save in the case of her claim to the Mosquito Coast. As that history has already been discussed at some length and with much detail, a brief résumé thereof is all that need be given here in order to demonstrate this proposition.

(a) *The Usurpatory Decree of 1836.*—Colombia, who had respected the Culebras, Chiriquí, or Calobébora River, the outlet of which was opposite the Escudo de Veragua, as the divisional line with Costa Rica on the Atlantic side, from the time of their independence and their mutual recognition as States by the Treaty of 1825, took forcible possession of Bocas del Toro and out of it formed the canton of that name. This district, according to the legislative decree of 1836 (Doc. No. 267), had for its boundary on the northwest the line that separated on that side the neo-Granadian and Central American territories, starting from the outlet of the Culebras River; that is, transferring the boundary from the right or east to the left or west of the entire Bay of the Almirante and its territories.

At that time Colombia set up no basis for her alleged right, but it is to be presumed that she took advantage of the error made by D'Anville in his map of 1746 (Map VIII, reproduced in later maps), whereby there was a general juggling of rivers—the suppression of some, the

addition of others and the indiscriminate changing their names. For instance, he brought down to the Pacific the name of the River Estrella (Tilorio or Changuinola), and rechristened that river with the name of "Culebras," which he took from the Chiriquí, or Calobébora River.

That the Culebras River of the 1836 decree was not, and could not have been the Sixaola, can be satisfactorily shown, as follows:

1. There is not in existence any known document, either in print or manuscript, that can serve to identify or locate the Culebras River of 1836; on the other hand, there is an abundance of geographical charts in which the true location of a river of that name is fixed. Laying aside those prior to 1746, in which the river referred to is found to be situated to the east of the *Chiriquí Lagoon* and to be equivalent to the Chiriquí, or Calobébora River, to which reference has been made in another place, those published subsequently to 1746, with surprising uniformity, give to the *Culebras* the location given to it in that year by the map of the geographer, D'Anville; that is, the first location immediately to the west of the western arm of *Almirante Bay*, called *Punta Gorda*, *Punta Tervis* and *Punta Sorepta*; this also is evidenced by the thirty-three maps recorded on Diagram I, which has been prepared for the purpose of showing the situation of the Culebras River in relation to *Punta Tervis* and the River of the Talamancas, which is no other than the *Sixaola*.¹

In corroboration of this identity between the Talamanca, Sixaola, or Tarire, the following quotation is made from the learned Dr. Frantzius: "Also the Knightly Monk, Arias Maldonado, made his claim to the title of *Marquis of Talamanca* by virtue of the campaign against the Indians, in 1662, who inhabited the Sixaola; from that time that part of the country has been called the Province of Talamanca." (*The southwestern part of the Costa Rican Republic*, by Dr. A. von Frantzius, in the Report of the Justus Perthes Geographical Institute, by D. A. Pettermann Vol. XV, 1869.

In its turn the diagram verifies and confirms the maps therein recorded, which maps are included in the *Historico-Geographical Atlas of the Republic of Costa Rica*, filed herewith. It will be observed that the Culebras referred to, marked in red ink, pursues an unvarying, intermediate course between the said *Punta Tervis* and the *Talamancas River*; the absolute impossibility that the two streams indicated are, or can be, confounded, will also be observed. The diagram referred to is supported by Table No. 3 in which is set forth the geographical longitude and latitude of the outlets of Culebras River and the Talamancas (*Sixaola*) Rivers, as well as the *Punta Tervi*, with an indication of the distances that separate the latter Punta from the mouths of the rivers mentioned, all of which is in accord with thirty-three of the maps included in that table.

With such evidence before one, it is physically impossible to suppose that the *Culebras River* of 1836 could be the *Sixaola River* of to-day.

(b) *Treaty with the Isthmus of 1841* (Doc. No. 278).—Costa Rica reserves to herself her right to claim possession of Bocas del Toro, "which the Government of New Granada had occupied, going beyond the division line located at the Escudo de Veragua."

(c) *Señor Fernández Madrid's Reports of 1852 and 1855*.—In these two reports (the one to the Executive and the other to the Senate) the Government of New Granada is advised to abandon the Royal order of 1803 as its justification for the occupation of Bocas del Toro, and to negotiate an agreement with Costa Rica on the basis of the ancient Spanish colonial division. They make no mention of any legal title, but rely on the maps, referring particularly to the geographical charts of D'Anville and his followers.

It cannot be doubted, says Señor Fernández Madrid, in 1852 (Doc. No. 298), that in some official act of the Spanish Government there was fixed as the end of the two jurisdictions on the Atlantic, the *Culebras* River, since "the most accredited" among the old geographers—D'Anville, Vaugondy, etc.—are in accord in recognizing it, thus showing that he was unacquainted with the maps of the XVIIth Century, which D'Anville had altered according to his own whim. Señor Fernández Madrid proposed that the "Punta Careta or the outlets of the Doraces or Culebras, indiscriminately," be claimed as the extreme northern boundary.

The resolution of the New Granada Senate, drafted by Señor Fernández Madrid himself, stated as matter of fact that the jurisdiction of the Isthmus extended as far as "the mouth of the *Doraces* or *Culebras* River, a short distance from Punta Careta." Its author affirmed that the most general and respectable opinion of the geographers and historians of America, and the acts of the Spanish government combined to fix the terminal of the divisional line in the *Culebras* River; but that, as he had not failed to note in each of the authorities some discrepancy as to which of the points referred to (*Doraces*, *Culebras* or *Punta Careta*) was the one that in reality separated the two jurisdictions, it would have to be the subject of an adjustment.

This reference to Punta Careta, or Punta Mona in the reports of Señor Fernández Madrid is the first time that point figures in the history of the Costa Rican republic's relations with her neighbor down to the time of President Loubet's Award; in that arbitration no one appeared to remember it.

As may be seen those reports refer indiscriminately to the *Doraces* and the *Culebras* as the extreme northern limit of the divisional line.

But Señor Fernández Madrid must have given more thought to the point in preparing his senatorial report of 1855 (Doc. No. 302), for he suppressed that affirmation and confined himself to proposing that either one or the other of those two rivers should be claimed, possibly to avoid placing himself in contradiction to D'Anville and his followers who had called the Changuinola the *Culebras* and had given the name "*Doraces*" to another river situated farther to the west.

(d) *The Treaty of 1856 (Calvo-Herrán)*.—General Herrán, when charged by the Government of New Granada with the negotiations leading up to the treaty with Costa Rica, claimed the Doraces River as the northern boundary. Costa Rica defended her right to a boundary as far as the Escudo de Veragua, but because of the circumstances in which she found herself (involved in a war and devastated by cholera), was forced to yield; wherefore, in the Treaty of 1856, signed by Señores Calvo and Herrán (Doc. No. 307), the boundary determined by the *Doraces*, from its source to its outlet in the Atlantic, was established.

But that treaty was not ratified by Costa Rica because, in approving it, the neo-Granadian Congress added thereto two explanatory clauses to the effect that it was understood that the *Doraces*, *Dorces* or *Dorados* River alluded to was the one "which is found at a short distance to the southeast of Punta Careta," and that all doubts that might arise should be resolved in accordance with the Hydrographic Bureau's *spherical map* of the Sea of the Antilles, published at Madrid in 1805 and corrected in 1809 (Map XVII), which it had had before it.

Costa Rica opposed these explanatory clauses on the

theory that the *Doraces*, *Dorces* or *Dorados* River was not the Sixaola, as had been erroneously supposed, but the *Changuinola*, basing her position on various maps, but principally on the absurdity of giving to the Sixaola the name of the tribes of the Doraces, who were located at a great distance therefrom.

The *Doraces* are found between the Chiriquí Lagoon and the Cordillera of the same name, and are bounded on the west by the Chánguenes and on the east by the Guaymíes. Any of the rivers that lie within those boundaries, and empty in the Chiriquí Lagoon or Almirante Bay, could have been called the Doraces River, notably the San Diego or Cricamola that serves the Doraces as their frontier with the Guaymíes on the east; similarly, by calling the Chánguene, or Changuinola, the Doraces River, the Costa Rican line could be made to fall back to its maximum in the country of the Doraces and reach as far as their western frontier with the Chánguenes. What is most difficult to conceive is that the name "*Doraces*," or "*Dorados*," should be given to a river flowing through a country inhabited by the Talamanca Indians, *fifty miles distant from the country of the Doraces*.

The true situation of the Doraces River, as heretofore stated, can be only in the country of the Doraces Indians, in the immediate vicinity of the Cricamola River; that of the false Doraces, is verified exactly and conscientiously, in the light of all the geographical charts and maps in which such a river is mentioned, in Table No. 3. This river occupies an intermediate stretch between the Culebras River on the east and the River of the Talamancas on the west; its geographical coordinates

are set out in the table referred to. It is to be noted thereon that from 1850, forward, the Doraces River is confounded with Changuinola (see Diagram K), which fact gave to counsel for Colombia the opportunity to try to confuse the same Doraces with the Sixaola (Talamancas), which is situated farther west.

Whatever may be the true identity of the River *Doraces*, *Dorces* or *Dorados*, there can be no shadow of doubt that the line of the 1856 Treaty did not, in the opinion of New Granada, pass the Sixaola, for that river "is found at a short distance to the southeast of Punta Careta," according to the explanatory clause added by Colombia, and it is the first river encountered to the southeast of Punta Careta, according to the *spherical map* above mentioned.

This point has been discussed at some length because what has been set forth shows conclusively that, according to the history of the treaties between the two republics, the claims of Colombia did not go beyond the Sixaola River, and none of the treaties were so oppressive to Costa Rica as that of 1856, which was drawn up under circumstances so unfavorable for her.

(e) *Treaty of 1865 (Castro-Valenzuela)*.—Nine years after the abortive Treaty of 1856, negotiations were resumed for another treaty; and although the Colombian Representative, Don Teodoro Valenzuela, began by demanding the line of the preceding treaty, as amended by the explanatory clauses of the neo-Granadian Congress—that is, taking the Doraces River to be the Sixaola—the 1865 Treaty was signed (Doc. No. 323), whereby the line claimed by Costa Rica was recognized almost in its entirety. It was carried from Punta Burica, along the

Main Cordillera, and doubled back to the hill of Santiago in order to follow the course of the Cañaveral, or Cañas, River to its outlet in the Atlantic. This river disembogues to the east of the Chiriquí Lagoon, opposite the Island of the *Escudo de Veragua*, and near the true *Culebras* River, that is, the Chiriquí, or Calobébora.

The Castro-Valenzuela Treaty came very near ratification by Colombia, for it was approved by the Senate and, on its first reading, by the House.

(f) *The Treaty of 1873 (Montúfar-Correoso)*.—The line of this treaty also starts from Punta Burica and, cutting across the Main Cordillera, follows the course of the Bananos River and ends at the outlet of that stream in Almirante Bay.

This line was not as favorable to Costa Rica as that of 1865, because its terminal was not opposite the Escudo de Veragua; but even with this, it left her in the ownership of a part of the territory confronted by Almirante Bay, and therefore, of all the Changuinola and Sixaola regions situated to the west of that bay.

The Treaty of 1873 (Doc. No. 334), was the last attempt at agreement by the two republics until, convinced of the inefficacy of their direct negotiations, they resorted to arbitration.

(g) *The Treaty of 1905 (Pacheco-Guardia)*.—The Award of President Loubet did not succeed in deciding the boundary question in the definitive, clear and incontrovertible manner required by the arbitration treaty, since it committed that consummation to the good will of the parties. Costa Rica and Colombia came to no understanding; but on the establishment of the Republic of Panama, its government and that of Costa Rica, desirous of more closely cementing their relations, did succeed in

reaching an understanding as to the interpretation to be given to the Award, and entered into the so-called Pacheco-Guardia Treaty of 1905 (Doc. No. 431).

According to that treaty the line was to start from Punta Mona, but it was so drawn as to meet the *Sixaola* River, down stream from Cuabre; thence it was to follow along the left bank of the Sixaola to a point opposite the confluence of the *Yorquín*, and continue along the line separating the waters of the Yorquín, etc.

This line conformed to the interpretation given to the Award by Señor Peralta, in his note to Minister Delcassé. The treaty, however, was not approved because of differences relating to the southern part of the line—that is, at its terminal in the Pacific—in regard to the partition of the islands in that sea. But no particular difficulty arose over the northern part of the line, that is, the Sixaola-Yorquín section.

Results to be Noted from the History of the Treaties.—The first result to be noted from this history of the Treaties concerning the boundary question is the conclusive demonstration of the fact that the claims of Colombia and Panama never reached beyond the right bank of the Sixaola, even applying to that river the names of "*Culebras*" or "*Doraces*." In proof of this assertion attention is recalled to the boundary marked out for the territory or canton of Bocas del Toro by the famous decree of 1836 and by that of 1837, both emanating from the Congress of New Granada (Doc. Nos. 267 and 275). The *Culebras* River's outlet in the sea formed the exact vertex of the angle made by the Atlantic coast line, which was the northern boundary of that territory and the line that divided on the *northwest* the neo-Granadian territory from that of the bordering Republic of Central America.

Shortly afterwards, in 1837, in a note addressed on the 2d of March, by Señor Lino de Pombo, the neo-Granadian Minister of Foreign Relations, to the Central American Government, concerning the question of Bocas del Toro (Doc. No. 272), the former said:

"For this reason, and on account of the special circumstances that since December 18 there has been already established in the territory of *Bocas del Toro* the Granadian authority created by the law to administer and preserve therein the lordship of the Republic * * * I have been ordered to make known to the Federal Government of Central America the foregoing facts and considerations, to the end that, by interposing its authority, it will cut short any claim or attempt from the State of Costa Rica to disturb the legitimate possession held by New Granada and the jurisdiction exercised by its government in the territory of Bocas del Toro, as it has been marked out by the legislative decree of May 30, 1836, fixing the extremity of its littoral AT THE RIVER CULEBRAS, WHICH IS, AND HAS ALWAYS BEEN, THE END OF THE COAST OF VERAGUA."

In the neo-Granadian decree of June 2, 1843 (Doc. No. 478), relating to the organization and special government of the territory of Bocas del Toro, the boundary thereof on its continental side was reformed as follows:

On the north, by the Atlantic.

On the south, by the crest of the Cordillera of Chiriquí.

On the east, by the Cañaveral River.

On the northwest, by "THE FRONTIER LINE WHICH ON THAT SIDE SEPARATES THE REPUBLIC OF NEW GRANADA FROM THAT OF CENTRAL AMERICA."

No mention was made of the Culebras River as the vertex of the angle formed by the north and northwest

boundary lines, but this omission is immaterial since it is not to be supposed that in the absence of a cession of territory by treaty on the part of Central America, or a conquest of territory to the prejudice of that republic, the neo-Granadian boundary could have advanced in the short space of time between 1837 and 1843, over Central American territory to the west of the *Culebras* River; much less when, by the Treaty of 1841, known as the Carrillo-Obarrio Treaty, solemn protest was made against the occupation of Bocas del Toro with the *Culebras* as boundary.

Before deducing other conclusions from the history of these treaties of importance to the present question, some stress must be laid on the significance given by Colombia to the names "*Culebras*" and "*Sixaola*."

(3) OFFICIAL DECLARATIONS OF COLOMBIA THAT THE SIXAOLA RIVER WAS CALLED BY HER DORACES AND DORADOS AND CULEBRAS.

There can be no doubt, from Señor Fernández Madrid's report of 1852 and the Senatorial opinion of 1855, that Colombia, in entering into the Treaty of 1856, understood that the Doraces and Culebras *were two distinct rivers*. The government vacillated between these two rivers and charged General Herrán to demand the *Doraces*, and it was thus specified in the 1856 Treaty. The Congress, in approving it, added the two explanatory clauses referred to, asserting that the Doraces was the river lying near the southeast of Punta Careta, the first, according to the spherical map of which mention has been made, that is to say, the Sixaola.

But the opposition encountered in Costa Rica by this understanding of the *Doraces*, and the determination to prevent future doubts as to what her claims were, as well

as the purpose to give them the force of historical tradition, were the reasons that induced Colombia to merge these rivers into one—the Sixaola—and it has been called indiscriminately by Colombia, the Doraces, Dorados and Culebras, ever since the failure of the Treaty of 1856.

When, during the negotiation of the Treaty of 1865, Señor Valenzuela, in the name of Colombia, proposed the Calvo-Herrán line, he said that the *Dorado*, *Dorces* or *Doraces* River “is the first river which shall be found toward the southeast from Punta Careta, commonly called Punta Monos” (Article 4, paragraph 2 of his counter proposal Doc. No. 322).

By reason of the events that occurred in 1869 and 1870 in the region situated between the Changuinola and the Sixaola, the President of the State of Panama, General Correo, on the 31st of May, 1870, addressed to the Government of Costa Rica a communication in which he asserted that the *Culebras* River, “called also the Doraces or Dorces,” was the boundary established by the Spanish government between the two countries on the Atlantic side.

The Colombian Minister Plenipotentiary in Costa Rica, Señor Pradilla, transmitted in his note of October 20, 1871 (Doc. No. 329), the official communication addressed on the 27th of the preceding June by Señor Iglesias, the political authority of Bocas del Toro, to the Prefect of the Department of Colón, in which he states that “the Sixaola is the same river *Culebras* which marked the boundaries with Costa Rica in the time of the former Colombia
* * *.”

The Minister of Foreign Relations of Colombia, Señor Rico, in his note of April 20, 1880 (Doc. No. 352), addressed to the Foreign Office of Costa Rica in the form of an *ulti-*

matum in the boundary question, designated "the main channel of the River *Culebras* to its sources," as the northern line, the crossing of which would be looked upon by his government as a usurpation.

Conformably with that note, the Colombian senate, in the First of its Conclusions of July 13, 1880 (Doc. No. 356), considered as such boundary the line "from the mouth of the River *Culebras*, in the Atlantic, going up stream," etc. The same was declared by the President of the Republic, Señor Núñez in his bellicose manifesto of September 6. Immediately thereafter the Arbitral Convention of December 25, 1880 was entered into.

Colombia, then, went into the arbitration with her claim expressly formulated under the name of the *Culebras* River, and relying on the prestige derived by this name from its historical tradition.

The Undersecretary of State in charge of the Colombian Ministry of Foreign Relations, Don Marco Fidel Suárez, in his note of March 16, 1891 (Doc. No. 381), to the Minister of the corresponding department of Costa Rica, spoke of the *Doraces* River as the boundary, referring it to the *Sixaola* River.

So that Colombia although understanding at the time of entering into the Treaty of 1856 that the *Doraces* or *Dorados*, and the *Culebras* were two distinct rivers, ended by merging their identities into the one river, *Sixaola*, in order the better to further her plans. Colombia availed herself of both names, accordingly as she sought to benefit herself by that treaty or rely on the aforesaid historical tradition.

(4) THE LINE RESULTING FROM THE TREATIES IN ACCORD
WITH THE MUTUAL UNDERSTANDING OF BOTH
PARTIES.

It has been conclusively shown that, except in the matter of the Mosquito Coast, the claim of Colombia never passed beyond the *Sixaola* River, even assuming that river to be the one she called the *Culebras*, *Doraces* or *Dorados*. But it may be presumed that the line to be fixed by the Honorable the Chief Justice will not be that of the *maximum* of Colombia's claim; and that he will decide in favor of the party who is in the right, taking into account the intent of President Loubet, liberally construed. Since President Loubet declared his purpose to decide in the light of the *principles of right* and the *historical precedents*, it becomes important to determine which line resulting from the history of the treaties conforms most perfectly with the mutual consent of the two parties; not only because those treaties constitute historical precedents of great weight, but also because it is a principle of international law, in the matter of arbitrations, that the will of the parties as revealed in their previous agreements and in their efforts toward amicable settlement must first be taken into consideration; and the more so since, in the note of Minister Delcassé, it was recommended to them that they should rely "on the spirit of conciliation and good will which had up to that time inspired them," and this spirit of conciliation is manifest in the agreements. It may, therefore, be positively asserted that the parties have always been agreed in fixing as the extreme boundary point on the Atlantic *the outlet of some river*, and, as the first section of the divisional line, the course of that river to its upper waters. The only exception that can be cited is the Treaty of 1905 (Pacheco-Guardia; Doc. No. 431); and

in reality, even this is not an exception, for that treaty was negotiated with the purpose of adjusting the point of departure of the Loubet line, which was designated by an error, as is evident to-day, and of seeking immediately to follow the course of the Sixaola River.

The river emptying into the Atlantic which was first agreed upon, according to the Treaty of Bogotá of 1825, was the *Chiriquí*, or *Calobébora* (also called the *Culebras*)—the only river to which that name may be properly applied. By reason of its geographical position, it corresponds to the ancient recognized boundary indicated by the Escudo de Veragua and adopted by old maps which antedated the erroneous D'Anville map of 1746. It is true that the Treaty of 1825 did not expressly designate that river, but it recognized the frontier boundaries "as they now exist," and *they existed* then in accord with the colonial *uti possidetis*, as they were defined by the organic law of Costa Rica published two months prior to that treaty; by that law it was provided that the country's divisional line with Colombia was that of the *Escudo de Veragua and Chiriquí, Calobébora or Culebras River*. The Treaty of 1825 was held to be in force, with respect to boundaries, by the Arbitral Convention of 1880.

Colombia's usurpatory decree fixes the Changuinola River as the boundary of the canton of Bocas del Toro, and clearly without the consent of Costa Rica, calls it the *Culebras*. But the Treaty with the State of the Isthmus, of 1841, accepts Costa Rica's reservation of right to the line involving the *Escudo de Veragua*, and, therefore, to the ancient *Chiriquí, Calobébora or Culebras*.

The Treaty of 1856 (Calvo-Herrán) accepts the Doraces River, but that treaty was not ratified because Colombia sought to add an explanatory clause by force of which that

river would have become identical with the Sixaola, Costa Rica insisting that it was the *Changuinola* or some other river nearer to the country of the Doraces Indians.

Colombia withdrew her claim to the Sixaola and agreed with Costa Rica, in the Treaty of 1865, to take for the divisional line the *Cañaveral*, or *Cañas*, River that empties to the east of the Chiriquí Lagoon, opposite the Escudo de Veragua and near the original *Culebras*, or *Chiriquí* River; and in the Treaty of 1873, Colombia agreed to *Bananos* River, which empties into the same Almirante bay, this being the treaty that immediately preceded the arbitration.

It follows, therefore, that of the five treaties which preceded the Loubet Award four fixed the divisional line in rivers located to the east of the *Changuinola* (those of 1825, 1841, 1865 and 1873), and one (that of 1856) leaves the question in dispute between the *Changuinola* and the *Sixaola*. It is to be noted, from these treaties, that those of 1865 and 1873 show Colombia's willingness to recede from her purpose to secure not only the *Sixaola*, but even the *Changuinola*. These are the corollaries that may be clearly deduced from the foregoing.

In accordance therewith the line resulting from the history of the treaties would appear to be represented by a river situated between the *Changuinola* and the *Chiriquí*, or *Culebras*, which could well be the *Cañaveral* of the 1865 Treaty, or the *Bananos* of the Treaty of 1873, or some other river flowing between those two.

(5) THE LINE OF THE TILORIO, OR CHANGUINOLA RIVER.

The *Sixaola* River cannot be considered as the line resulting from the history of the treaties, nor as the one agreed to by the parties on entering into the Treaty of 1856, for, as has been said, the other four treaties fix the boundary

to the east of the Changuinola, and there was then lacking the assent of Costa Rica to the acceptance of the Doraces (referred to in that treaty) for the Sixaola.

Neither is the Changuinola a resultant of the history of those treaties, for the reason already given, that four of those compacts designate four other rivers to the east of that river. But it may be held as an antecedent of Costa Rica's consent, if it is admitted that the name *Doraces* may be taken as applying to the *Changuinola*, that river being the western frontier of a tribe in the neighborhood of the *Doraces* Indians. It would seem that when President Loubet fixed his attention on the Sixaola, it was not because it was in fact the *Sixaola*, but because he supposed that this river was the same *Culebras* or the *Doraces* claimed by Colombia. The Honorable the Chief Justice would, therefore, be proceeding in conformity with that idea if he should interpret the Award by establishing as the divisional line the Changuinola River which corresponds to those two denominations and to the way those names were understood by the parties at the signing of the Treaty of 1856—the most unfavorable of all the treaties for Costa Rica.

The truth is that neither the name "*Culebras*" nor the name "*Doraces*" was known in Costa Rica, except when the first was applied to the Chiriquí, or Calobébora River, and the second to any river located in the lands of the Indian tribe of *Doraces*.

But the Costa Rican Representative, in signing the treaty, must have understood that the *Doraces* River was the Changuinola, first, because this was the one referred to by the usurpatory decree of 1836 under the name of *Culebras*, and was relied on by Colombia to legitimize her occupation of Bocas del Toro; second, because Costa Rica would have accepted no other denomination of the

Culebras, unless it applied to the Chiriquí, and, third, because the name of *Doraces* could only refer to a river embraced within the country of the Doraces or bordering thereon on the west—and under no circumstances to one located in a different region at a distance of fifty miles or more.

Proof of this lies in the fact that in the subsequent treaties the boundary ran through the country of “the Doraces,” the Bananos River which empties into Almirante Bay and the Cañaveral, which empties beyond that bay, on the east, having been named therein as such boundary.

The fact that Colombia instituted the canton of Bocas del Toro with the Changuinola as its western boundary, and that she entered into the Treaty of 1856, without ever having gone beyond that river, confirms the fact that the signatories to the treaty referred to that river, and that the Senate’s additional explanatory clause was drafted for the sole purpose of giving a broader effect to what had been agreed to.

Thus, then, although the Changuinola River represents the line most unfavorable to Costa Rica of all those stipulated in the treaties, it being the farthest away from the Escudo de Veragua and the true *Culebras* River, the Honorable Chief Justice should determine upon that line, starting out on the theory that President Loubet’s intention was to determine that line by the *Culebras* or *Doraces* River, because in Colombia the Changuinola was also called *Culebras* and the signatories of the 1856 Treaty combined on that river under the name of *Doraces*.

If, however, the fact is that they did not combine on that river, then that treaty cannot be invoked as evidence of a common accord; and the resultant mentioned must be reverted to; that is, a river running midway between the Changuinola and the *Culebras* of the Escudo de Veragua, and running through the country of the *Doraces*.

CHAPTER VIII.

DEFENSE OF THE SIXAOLA-YORQUÍN LINE

I. SECOND PART OF THE LINE; FROM THE JUNCTION OF THE YORQUÍN, BY THE DIVISION OF THE WATERS OF THIS RIVER, TO CERRO PANDO.

- (1) HISTORICO - GEOGRAPHICAL ERROR REGARDING THE COURSE AND SOURCE OF THE SIXAOLA RIVER.
 - (2) ULTRA PETITA EVIDENT IN THE AWARD.
 - (3) TWO HYPOTHESES FOR INTERPRETATION BASED UPON THE COLOMBIAN ACCEPTATIONS OF THE CULEBRAS RIVER.
 - (4) INTERPRETATION OF SEÑOR PERALTA ACCEPTED BY PANAMA.
 - (5) RESULT OF THE STUDY OF THE TREATIES WITH RESPECT TO THIS PORTION OF THE LINE.
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II. THE FACT OF POSSESSION WITH RESPECT TO THE SIXAOLA-YORQUÍN LINE.

- (1) THE FACT OF POSSESSION FROM THE INDEPENDENCE OF COSTA RICA TO 1880.
- (2) THE JURISDICTIONAL *Status Quo* OF 1880.
- (3) THE FACT OF POSSESSION, FROM 1880 TO THE LOUBET AWARD.
- (4) THE FACT OF POSSESSION FROM THE AWARD OF 1900 DOWN TO THE PRESENT DAY.

- (5) ESTABLISHMENT OF THE SIXAOLA-YORQUÍN LINE BY THE POSSESSORY JURISDICTION HELD BY COSTA RICA IN TALAMANCA.
- (6) LEGAL PRINCIPLES FAVORABLE TO POSSESSION AND APPLICABLE TO THE PRESENT CASE.

I. SECOND PART OF THE LINE; FROM THE JUNCTION OF THE YORQUÍN, BY THE DIVISION OF THE WATERS OF THIS RIVER, TO CERRO PANDO.

- (1) HISTORICO-GEOGRAPHICAL ERROR REGARDING THE COURSE AND SOURCE OF THE SIXAOLA RIVER.

The Award of President Loubet gives equal value to the names of Sixaola and Tarire in designating the river shut off on the north by the supposititious counterfort or mountain range that starts from Punta Mona. But just as that counterfort is non-existent, so also is it inexact to treat those names as equivalent.

In Costa Rica the river which has always been known by the name of *Tarire* or *Telire* is the one which Hernán Sánchez de Badajoz discovered in 1540 and which Diego de Sojo, on founding the city of Santiago de Talamanca, in 1605, designated as the western boundary of its jurisdiction. The modern explorers have named it the *Telire*, and the inhabitants along its lower course near the sea have given to that part of it the names of *Sixola*, *Sixaola* or *Sixaula*.

Dr. Alexander von Frantzius, referring to that river, writes as follows:¹

¹For the true location of the rich mines of Tisingal and Estrella, searched for in vain in Costa Rica. A Study by Dr. A. von Frantzius, translated from the German by E. Twight, in León Fernández, *Documentos para la Historia de Costa Rica*, Vol. II, pp. 57 to 62.

"Besides the hill of San Mateo there is another mountain which is reputed to have gold mines, located between the *North* River and the River *Teliri*. There are also found traces of gold washings the origin of which is in the hill of *Pico Blanco* and they fall into the tributaries of the *Sixaula* * * *. Lastly, I must mention in the fifth place the *Sixaula* River, which I consider to be the true River *Estrella* of olden times."

At the foot of this text is a note (27) by the same author, which says:

"SIXAULA IS ONLY THE NAME OF THE MOUTH OF THE RIVER, a very modern name given to it by the Zambos Mosquitos who every year pay a visit to those coasts in search of turtles, and this name has been preserved."

Another footnote marked (o), and inserted by the editor of the text, Don León Fernández, reads as follows:

"I regret to be in full disaccord with the opinion of the learned Dr. Frantzius in this matter. The ancient and true River *Estrella* is the actual *Changuenola* (Chánguena), also called *Tilorio*, and by no means the *Sixaula* (Tarire), a name that some others spell *Sicsola*. I base my opinion on the oldest documents that I have been able to find; and only in documents of a comparatively recent date the name of River *Estrella* is applied to the *Sixaula* (Tarire). I will give here my reasons for the better judgment of the reader * * *."

Dr. von Frantzius continues:

"The *Sixaula*, the mouth of which is called by that name in nearly all the modern maps of Central America, is formed by the confluence of five rivers, the *Telire*, *Coén*, *Lari*, *Urén*, and *Yurquin*. The source of these five rivers is found in the northeast slope of the Chirripó, Pico Blanco and Róvalo hills."

The Governor of Limón, Don Balvanero Vargas, in a report dated October 31, 1887 (Doc. No. 552), and addressed to the Minister of Government says:

"The majestic *Sixaola* does not have a source, like all the other rivers which wash the picturesque localities of Talamanca, but it is formed by three tributaries, the meeting of which is at a place called "Sureca," an old possession of the first merchants who penetrated into these virgin forests.

"The rivers, whose plains are an admirable mixture of beautiful landscape and natural riches, are called, "Cuén," "Lare" and "Tilire." It is from Sureca that the great river takes the name of "*Sixaola*."

These statements are abundantly confirmed by Professor Gabb, who remained in that locality for eighteen months and made a complete scientific survey of the country (Doc. No. 582). It may, therefore, be accepted as an established fact that the synonymity between the *Sixaola* or *Sixaula*, and the *Telire* or *Tarire* is only effective in connection with the *lower course* of the river. Now, since the synonymity between the *Sixaola* and the *Culebras*, devised and forced into the case by the Colombians, makes it necessary to give to the stream designated by those names the *north-south* direction which in all official and non-official maps of Colombia is given to the *Culebras* River, it becomes imperatively necessary to take as the continuation of the *Sixaola* (or *Culebras*), up stream, a river whose course bears the same *north-south* direction; and no other river possesses these characteristics but the *Yorquín*, the last considerable affluent of the *Sixaola* before it reaches its outlet. This is the river which, in the latter years preceding the last treaty of arbitration (1896) marked the jurisdiction *de facto* of the two governments, and which, perhaps for this reason, received on various maps (such as those of

Friederischen and Bovallius) the name of *Culebras* or *Dorados*. Following the course of the Sixaola up stream from its mouth in the Atlantic, a point is, in fact, reached which marks the affluence of the Yorquín or Zhorquín River, also called the *Culebras* or *Doraces*. In trying to follow the Culebras River (confounded with the Sixaola or Tarire) the necessity to abandon the main river and follow up stream the course of the Yorquín becomes unavoidable, for the very excellent reason that the Tarire, taking from the confluence of the Yorquín, up stream, a direction almost in a straight line from *west to east*, makes a turn almost at right angles with the course the Culebras River is obliged to take in accordance with all the Colombian geographers, cartographers and publicists who have dealt with the boundary controversy between Costa Rica and Colombia. In support of this truth reference is made to the most notable of Colombia's official maps, beginning with that entitled "*Carta Corográfica del Estado de Panamá, construida con los datos de la Comisión Corográfica y de orden del Gobierno General*," by Manuel Ponce de León, Engineer, and Manuel María Paz (Map XXXI).

This map does not treat the Culebras or Dorados and the Sixaola Rivers as synonymous, but to each it gives a course, from the Main Cordillera, where they have their source, toward the Atlantic, in a direction approximately *south-north*. Admitting, for the sake of argument, the very patent error of the duality of the rivers there is always to be considered the most important fact that the Culebras River, marked out as the boundary of the territory of Panama contiguous with Costa Rica, takes a course that approximately conforms with the *meridian* of its outlet whereas the true general direction of the Tarire River coincides approximately with the parallel of its disembogement in the Atlantic. It is clear, therefore,

that under those conditions, when at the mouth of the Sixaola, a meridian of latitude and a parallel of longitude coincide in a right angle—the Culebras River representing the meridian and the Tarire River the parallel—those two rivers could not possibly be identical from their outlets to their sources; nor could a frontier, the recognized course of which is *from north to south*, be marked by a stream such as the Tarire, the general direction of which is *from west to east*.

What is shown by the Ponce de León and Paz map of the State of Panama is exactly duplicated on the official Colombian maps to which reference will be made in a moment; they are all published in the "Geographical and Historical Atlas of the Republic of Colombia (the ancient New Granada) which comprises, besides, the Republics of Venezuela and Ecuador; in Accordance with the Works Executed in Venezuela and New Granada; the Chartographical Part is Prepared by Manuel M. Paz, Member of the Geographical Society of Paris, and the Explanatory Text is Edited by Doctor Felipe Pérez, ALL UNDER THE ORDERS OF THE NATIONAL GOVERNMENT OF COLOMBIA; Paris, 1889."

In this Atlas appear Map VI, which shows the theater of the War of Independence during the years 1806, 1811 and 1814; Map VII, covering the same ground for the years 1815 to 1819; Map XI, showing the political division of Colombia in 1824; Map XIII, giving the division of the territory into Departments; Map XIV, giving the orography and hydrography of Colombia; Map XV, showing the territorial divisions down to 1886; Map XVII, giving the geology of Colombia, and Map XVIII, giving postal and telegraphic service of that republic (Maps XXXVII, XXXVIII, XL, XLI, XLII, XLIII, XLIV,

XLV). In these eight maps *the frontier with Costa Rica is distinctly shown*, with its point of departure on the Atlantic at the intersection of meridian $83^{\circ} 07' 30''$ West of Greenwich and parallel $8^{\circ} 02' 30''$ North Latitude. Its direction is not from *east to west*, as it is desired that it shall be left, after the Award of President Loubet; but from *north to south*, as *Colombia always claimed it should be and as she always ordered it to be represented on her official maps*. Thus, in a *north-south* direction, the frontier is shown on all the unofficial maps of Colombia; and in this same way her best geographers have described it. As evidence of this reference is made to the Restrepo map, (Map XXII) known as the "*Carta del Departamento del Istmo*," dated 1827; and to the "*Carta de la República de Colombia*," by Codazzi, 1840 (Map XXVI), included in the Physical and Political Atlas of Venezuela, which map agrees wholly in marking the frontier as starting at the Changuinola River (the first river to the west of Bocas del Toro) and ending in the Gulf of Dulce, following a north and south direction with an inclination of a few degrees to the west.

But the eminent American engineer, William M. Gabb, in the map he prepared by order of the Costa Rican Government, in connection with his exploration of the Province of Talamanca, showed that the *Tarire* River, which in the last reach of its lower course runs from *south to north*, has in reality throughout its general course, and particularly in its upper reaches, an approximately *east to west* direction, almost at right angles, therefore, to the *north-south* course which had been given invariably and uniformly to the *Culebras* River.

It follows from the foregoing that if the name of *Sixaola*, as a synonym of *Culebras*, coincides, or could coincide, with the name of *Tarire* for the lower course of that river as

far up as its confluence with the Yorquín, it does not and could not be extended to the whole of the *Tarire*, not only because it ceases to apply at the point of confluence, but also because it should continue in its application as designating the *Yorquín*, as is shown on several of the maps.

President Loubet fixed his attention on the *Sixaola* River, as has been stated, not because it was in fact the *Sixaola*, but because he believed it to be the *Culebras*; he identified the *Sixaola* with the *Tarire*, which, by error of fact, he thus converted into the *Culebras* River; and apparently he conceded this river in its entirety to Colombia as though bestowing nothing new on that country, but rather as confirming Colombia in the possession of what he thought she already had—in the supposition, doubtless, that thereby he was not invading territory which had not been submitted to his jurisdiction by the treaty.

It is now pertinent to inquire whether or not the *north-south* direction indicated by the *Yorquín* accords with the antecedents of the question President Loubet was called upon to decide, and with the criterion under which he reached his decision.

The description of the neo-Granadian-Costa Rican frontier line proposed by Colombia's first geographer and cartographer, General of Engineers Codazzi, has already been given in another part of this Argument; it is enough to say here that from the Gulf of Dulce, and following the edge of a range of mountains called Las Cruces, a line stretches almost due SOUTH-NORTH to the source of the *Culebras* River, and *along the bed of that river, always in the SOUTH-NORTH direction*, comes to an end at the outlet of the *Culebras* in the Atlantic, according to the map of Panama published in 1854. *The Main Cordillera that divides the watersheds between the two oceans does not*

form a part of the frontier line proposed by General Codazzi; although its course cuts the said cordillera at the point in its height where the *Culebras* River has its source.

When the Calvo-Herrán treaty was entered into, in 1856, its negotiators must have had General Codazzi's map before them, because it had already served New Granada as her basis in the Molina-Herrán negotiations that preceded that treaty, and this because of the credit enjoyed by its author in New Granada, the recent date of that map, and the fact that it was the first one made of that territory on the basis of studies which were believed to be effective, carried on as they were by a competent commission.

A further basis for the negotiation of the Calvo-Herrán treaty was the frequently mentioned report of the neo-Granadian Senate's Commission, signed by Señor Fernández Madrid on the 10th of April, 1855, which contains the following passage:

"But it is to be observed that these mutations
* * * did not introduce any substantial change in the limits of the Viceroyalty, properly speaking, the jurisdiction of which * * * was extended constantly to all the territory of the Isthmus which, according to trustworthy, historical and geographical data, adduced in the course of this paper, *bordered with the territory of Costa Rica by a line drawn from the middle of the Gulf of Dulce to the mouth of the River Doraces or Culebras*, a short distance from Punta Careta, which is also, approximately, the boundary indicated by Baron de Humboldt and other celebrated travelers."

Not many years later—in 1862—Dr. Felipe Pérez, a member of the new commission charged by the general government with the chorographic work of Colombia, published a treatise on the physical and political geography of

the State of Panama. In recording the boundaries of that state, Doctor Pérez asserts that the territory bounding it on the WEST belongs to Costa Rica, and that on the north and south lie the North and South Seas, respectively; wherefore, the line dividing the two states must run *from north to south*—from one ocean to the other—leaving the territory of Panama on the EAST of the line and that of Costa Rica on its WEST.

Entering more into detail, Doctor Pérez, says:

“The boundary line with that Republic [Costa Rica] starts in the Atlantic to the south of Punta Careta at the outlet of the *Dorados* River.”

And in a footnote he makes the following observation:

“In several foreign maps one reads *Doraces* and in others *Dorces*, although the original and Spanish name is *Dorados*. But, the most common name for this river is CULEBRAS.”

The text proceeds:

“This river also marks the boundary as far as its source, which lies in the Main Cordillera IN A SOUTHERLY DIRECTION; but the line instantly proceeds along the summits of a branch range that takes a direction toward the Gulf of Dulce, ALSO IN A COURSE NEARLY SOUTH; this branch they call the *Cordillera de las Cruces*, and through its center crosses the trail or foot-path that leads from the town of Bugaba to the Indian village of Boruca belonging to Costa Rica.”

At this point a further footnote reads:

“Beyond Las Cruces the divisional line is not determined and it could only be fixed by means of a boundary treaty with the neighboring Republic of Central America. However, some believe that the line ought to run from Las Cruces to Punta Burica upon the

Pacific, through a broken territory full of small hills and hummocks belonging to different branch ranges and covered with wild forests, as far as the range of hills which form the Punta that has been mentioned. But the best boundary would be the continuance of the line by the same Cordillera of Las Cruces, following the watershed as far as the sources of the River Golfito, the outlet of which is in the Gulf of Dulce. It is not out of place to note here that this same boundary *is the one that has been provisionally traced on the map.*"

In dealing with the orography of Panama, Doctor Pérez writes as follows:

"* * * El Picacho is distant from the Horqueta 1.5 myriameters. From thence the Cordillera [which divides the waters flowing into both oceans] runs to the NORTHWEST. And at a distance of five myriameters it penetrates into the Republic of Costa Rica upon the sources of the River *Dorados* or *Culebras*. From this point starts a branch range running NEARLY TO THE SOUTH, known by the name of Cordillera of Las Cruces and which ends at the Gulf of Dulce upon the Pacific, forming a very variegated country. From this branch start several other branch ranges, one of which, interrupted by hummocks, small prominences and knolls rises near Dulce Gulf and forms a line of hills ending at Punta Burica."

In the "*Geografía General Física y Política de los Estados Unidos de Colombia y Geografía particular de la Ciudad de Bogotá* (Bogotá, 1883), by the same Doctor Pérez, this author makes the following citation from the Colombian historian, Señor Restrepo. This is what Señor Restrepo says:

"This designation of New Granada is not old, for it did not begin to come into very general use until after the beginning of the present century. It was made up in the Eighteenth Century of two Presidencies or

main sections; that of Quito and that of the New Kingdom of Granada,—vast countries that extended from the Cove of Maracaibo, running toward the West as far as the River Culebras upon the shores of the Atlantic."

At another place in the same work, Doctor Pérez writes as follows with reference to the "*cédula*" of San Lorenzo:

"In accordance with this disposition, which was still in force in 1810, when the revolution began that led to independence, the Government of Colombia, and subsequently that of New Granada, held the right of exercising civil and military jurisdiction from Cape Gracias a Dios as far as the River Culebras or Punta Careta, the former boundary of the Viceroyalty of Santa Fe, according to the map of Humboldt, published in 1823. But this jurisdiction, *undefined as regards its breadth, and which ran only upon the line of the Mosquito Coast*, was of no use to New Granada, except to bring up disagreeable questions with the Republics of Central America and with the foreign nations that coveted that territory. For such powerful reasons the Granadians *ought not to continue maintaining the aforesaid* MARITIME JURISDICTION BEYOND OR FURTHER NORTH THAN THE RIVER CULEBRAS. We understand that is the view held by our country [1848], and that it will make a treaty very soon with the Government of Costa Rica, arranging in conformity with these indications the respective boundaries across the Isthmus of Panama."

Doctor Pérez adds that another Colombian historian, Colonel Joaquín Acosta,

"* * * laid down the River Dorados or Culebras upon his map as the *dividing line between the Republics of New Granada and Costa Rica*; and he undertook to justify that line, as well as others that he traced thereon, in the following note: 'In order to trace the limits with the neighboring Republics I have had

recourse to the principle now explicitly admitted, and and I have therefore adopted those that the Viceroyalty had in 1810, the period of our revolution.'"

On his part, the ex-President of Colombia, General Tomás C. Mosquera, in his *Geography of Colombia* (1866) says, in describing the boundaries of his country:

"The special limits are the following: with Costa Rica: the boundary line with this Republic starts from the Atlantic, to the east of Punta Careta, *at the mouth of the River Culebras; thence it follows this river as far as its source, which is found in the Main Cordillera in a SOUTHERN direction.* The line takes afterwards the summits of a branch range which runs toward the Gulf of Dulce (nearly in a southern direction also); this branch range is called 'Cordillera de las Cruces' and the line crosses by its center the trail or path going from the village of Bugaba to the Indian village of Boruca."

The President of the State of Panama, General Correo, in a communication addressed to the President of Costa Rica, under the date of the 21st of May, 1870 (Doc. No. 325), informs the latter that the boundaries fixed by the Spanish Government between Colombia and Costa Rica are:

"* * * On the Atlantic *the River Culebras, called also the Doraces or Dorces; and upon the Pacific, the Gulf of Dulce between Punta del Banco and Cape Blanco.*"

Dr. Pradilla, the Colombian Minister at San José, in an official note of October 20, 1871 (Doc. No. 329), affirms, in his turn, that the boundary referred to is the *Doraces River*.

In the "*Diccionario Jeográfico de los Estados Unidos de Colombia*" by Joaquín Esguerra O., "Obra redactada en vista de los autores de jeografía del país i de los datos

oficiales que se han publicado sobre la materia" (Bogotá, 1879), in the article entitled "Colombia," on page 63, the following appears:

"* * * Along the Atlantic its coasts stretch from the middle of the Cove of Calabozo, in the Gulf of Maracaibo, as far as the outlet of the River *Doraces* or *Culebras* in Costa Rica * * *. The general boundaries of the country are * * * on the NORTH-WEST the Republic of Costa Rica * * *. The territorial boundaries, according to the Latin American principle of the *uti possidetis juris* of 1810, the most trustworthy traditional data and the works and maps of our national geographers, are the following: on the Atlantic the line of the coast which runs from Paijana Creek in the Cove of Calabozo (Gulf of Maracaibo), as far as the River *Culebras* in Central America * * *. WITH COSTA RICA: the main channel of the River *Culebras* as far as its sources; whence follows a line by the edge of the range of *Las Cruces* as far as the mouth of the River *Golfito* in *Dulce Gulf*."

It is worthy to note that in this geographical dictionary of Señor Esguerra's there does not appear any article referring to the "Culebras River," either under that name or under the other names that have been attributed to that river, to-wit, Changuinola, Dorados, Dorces, Doraces, Tarire, Sixola, Sixaola, Sixaula, etc.

From the passages quoted, it is clear that several important conclusions may be deduced; these may be stated as follows:

First. That, according to the claims of Colombia, the frontier line follows an almost straight north to south course.

Second. That, according to those claims, said line is formed by the beds of two rivers: the *Culebras* on the Atlantic slope, and the *Golfito* on the Pacific slope; and

the sources of the two rivers are connected by a mountain range (not the main, or Andine, but the secondary cordillera of the Pacific, called the Cordillera of *Las Cruces*), the general direction of which is approximately NORTH-SOUTH, and which forms part of the frontier.

Third. That the Main Cordillera that divides the waters flowing into the two oceans—the direction of which is NORTHWEST to SOUTHEAST—does not form a part of the frontier according to those claims, although this frontier crosses it diagonally.

Fourth. That the point of union of the northern extremity of the Cordillera de las Cruces, where the frontier (according to the dicta of the Colombian geographers) continued by the source of the Culebras River, is found to be distant some five myriameters from the hill of Picacho, that is, $82^{\circ} 58' 5''$ west of the meridian of Greenwich, and $9^{\circ} 7' 20''$ north latitude, according to the official map of the State of Panama, prepared by Señores Ponce de León and Paz, in 1864 (Map XXXI). This point coincides with that located $14\frac{1}{2}$ kilometers distant to the west of Pando hill, according to the last map of Costa Rica, prepared by H. Pittier in 1903 (Map B), and 74.4 kilometers to the southwest of the *Chirripó Grande*, the angle landmark mentioned in Panama's interpretation of the Award; so that, between that landmark, which is now asked for as one of the principal landmarks of the frontier of Panama, in her interpretation of the Award, and the frontier claimed by Colombia, according to the latter's official geographers, there is a distance of nearly $7\frac{1}{2}$ myriameters measured in a straight line over the summits of the Main Cordillera, WHICH IN NO EXTENSION FORMED PART OF THE FRONTIER OF COLOMBIA.

Fifth.—That the source of the *Culebras* River must be sought at the geographical point above mentioned, at $82^{\circ} 58' 5''$ west of Greenwich and $9^{\circ} 7' 20''$ north latitude, and not farther to the west of that point.

(2) ULTRA PETITA EVIDENT IN THE AWARD.

The demand formulated in the Arbitral proceeding by Señor Silvela, in 1898, which identifies the names *Sigsaula* and *Tiliri* with the *Tarire* River, did not ask for the whole course of that river starting from its outlet in the Atlantic, but only up to the point at which it is cut or crossed by the meridian corresponding to the outlet of the *Golfito* River (which by error is made to start from *Punta Golfito*, as has been already shown), leaving in Costa Rica the rest of the *Tarire* and all of its sources.¹ It is evident, then, that the Loubet Award, in adjudicating to Colombia the entire *Tarire* River and its sources (if it is so to be understood), falls into the error of *ultra petita*, which cannot be permitted to prevail under the principles of international law, and much less in the light of what was agreed to in the Convention of Washington, in conformity with which the frontier was to have been drawn within the limits of the territory in dispute. This frontier, however, did not reach,

¹Memorandum presented by Don Francisco Silvela to His Excellency the President of the French Republic, December 8, 1898, pp. 63, 64, 72.

with respect to territory watered by the *Tarire*, as far as the point asked for by Señor Silvela; far from it, indeed. And it is certain that if the Arbitrator, in his concessions to Colombia, could under no circumstances pass beyond the line contended for, much less could he overstep the point in the river indicated by the intersection of the said meridian.

Logic forbids the interpretation of President Loubet's Award in the sense of carrying the divisional line as far as that point, for if Señor Silvela claimed such a great stretch of the *Tarire*, it was because of his desire to start from the meridian of the Golfito River, instead of the meridian corresponding to Punta Burica, in fixing his first straight line, and also because of his desire to start from the intersection of that meridian with the *Tarire*, in order, by means of another straight line, to establish his claim to the Atlantic zone. President Loubet ignored the two theories of the two straight lines that crossed each other at the point referred to in the *Tarire*, and started his demarcation at the Pacific, from Punta Burica, running from south to north as far as Pando hill, and denying the claim to the Atlantic zone which, according to the declaration of the Colombian senate, began at the outlet of the Sixaola, and possessed only such width as corresponded to the *littoral* or *coast*. It is evident, therefore, that President Loubet, had he not been obsessed by the false idea of the counterfort and impressed with the need of consistency in his own decision, would have continued the line from Punta Burica to Pando hill, in the same south-north direction, as far as the source of the Yorquín, and would have followed the course of that river and then continued along the bed of the Sixaola to its end in the sea.

(3) TWO HYPOTHESES FOR INTERPRETATION BASED UPON
THE COLOMBIAN ACCEPTATIONS OF THE CULEBRAS
RIVER.

If, ignoring what Colombia asked for concretely in Señor Silvela's demand, the Conclusions adopted by her Senate of Plenipotentiaries, in 1880, for the negotiation of the arbitral convention of that year are adhered to, it will be seen that in view of President Loubet's desire to decide in conformity with the maximum boundary claimed by that republic, everything depends upon what is to be understood by the *Culebras* River, for a river of that name only is spoken of in those Conclusions in connection with the boundary now in question.

No point is now made on the score of any influence that might have been exerted upon the mind of President Loubet by that name by reason of its historical tradition, corresponding, as it does, to the pristine acceptation in which it has always been used and defended by Costa Rica. Interest is centered solely in Colombian acceptations; and standing on those acceptations, two hypotheses for interpretation are constructed, whether the Changuinola or the Sixaola is understood to be the *Culebras*.

The Arbitrator could have taken the Changuinola to be the *Culebras*, for it was so designated by the usurpatory decree of 1836, and it was so denominated by D'Anville and his followers in the maps on which the Colombians relied for justification of their occupation of Bocas del Toro. The line described by the Colombian senate, in its First Conclusion, as the boundary of the territory of which it claimed to be in *possession*, applies perfectly to the Changuinola beginning at the river's outlet in the Atlantic and continuing along Las Cruces range to the source of the

Golfito River. Colombia, in 1880, possessed in fact, but not in law, certain territory in the eastern region of the Changuinola. This all tends to confirm the interpretation which Costa Rica asks for in the first instance.

The second hypothesis --that the Sixaola is the Culebras--can only be based upon the report prepared by Señor Fernández Madrid in 1852, or on the supposition that the Doraces of the 1856 treaty is the Culebras River, according to the explanatory clause in which the neo-Granadian congress claimed the Sixaola to be the Doraces River, that is, "the first river which is found at a short distance to the southeast of Punta Careta."

Señor Fernández Madrid in his report of 1852, above mentioned, proposed that these be claimed as the extreme points of the frontier line, one at the Gulf of Dulce, for the Pacific terminal, and, for the Atlantic terminal, the mouths of the *Doraces* or *Culebras*. As to the line that should unite these extreme points, he advised that it be left to subsequent negotiations, when the country should be better known and a good topographical map made, for, he said, "the fact is that the division line between the two Republics runs through a rough country which was never explored during the time of the Spanish government and *which even yet has not been surveyed.*"

The report of the Committee on Foreign Relations of the Senate of New Granada, of 1855, after fixing the extreme point on the Pacific side in the mouth of the Golfito River, proposed "the irregular line (also *unknown* in part) which, ascending by the River Golfito and passing by the Sierra de las Cruces, must serve as boundary in the interior, until it reaches the headwaters of the River *Doraces* or of the Culebras; by the course of *one of which* streams the frontier

must naturally proceed," until it reaches the outlet of that river in the Atlantic.

The Government of New Granada chose to claim the *Doraces* River and thus agreed in the Treaty of 1856 (Calvo-Herrán) which designated as a frontier line: a line which, starting from Punta Burica ran in a straight course to the headwaters of the Agua Clara River, and thence by another straight course, in a northwest direction, to the Cordillera de las Cruces, continuing along its crests until it met the headwaters of the *Doraces* River, and following along the course of that river to terminate at its outlet in the Atlantic.

It follows, then, that in entering into the 1856 treaty the Colombians knew nothing of the intermediate line between the region to the south, indicated by Punta Burica, and the *Culebras*, or *Doraces* River, and if they did not know of it, it must be evident that they were not in possession of that territory; it also follows that their knowledge of the *Sixaola* River was confined to such indications as they were able to gather from the maps of that period, and that making the frontier start from the south and run in a straight line toward the north, it proceeded, by the shortest line, in that treaty, to the *Doraces* River, which is the first to be met with in that direction. And as this first river, flowing in the direction indicated, is the *CHANGUINOLA*, there is still further justification for the belief that the neo-Granadian Government referred to the *Changuinola* when, in the Treaty of 1856, it asked for and was accorded the *Doraces* River.

Beyond the headwaters of the *Doraces*, proceeding in the same direction, one comes to the headwaters of the *Yorquín*, also called the *Culebras* by some cartographers, and, in its ascending course, considered to be the *Sixaola*

itself by the geographers of the period of the treaty, and subsequently thereto, for not until recent times have the works of William M. Gabb concerning the sources of the Tarire been known, and consequently it cannot be presumed that Colombia could have understood that the headwaters of the Doraces or the Culebras—were to be found to the west instead of to the south of the river's mouth, at a point far distant from that at which the cordillera was crossed by the north-south line of the 1856 treaty in search of those headwaters.

The D'Anville map of 1746 (Map VIII), shows the rivers which the author calls the *Culebras* and *Doraces* as running in a straight line from northeast to southwest and without the angle formed by the Tarire River and the east to west direction that this river has in its almost entire course. The spherical map of the Sea of the Antilles, constructed by the Hydrographic Bureau of Madrid in 1805-1809 (Map XVII), which, according to the additional explanatory clause injected into the treaty by the neo-Granadian congress, was made to serve as a basis for the 1856 treaty, gives the same course for the river which it calls the *Dorados*. The chorographical map of the State of Panama, prepared under the orders of the General Government, by Manuel Ponce de León and Manuel M. Paz and published at Bogotá in 1864 (Map XXXI), not only shows the river which it calls the *Sixaola* as running in that same direction, and in a straight line even more pronounced, but it deflects that line toward the east on its arrival at the source of that river.

All of which goes to show that the Yorquín was held to be an ascending continuation of the Sixaola River; and the Yorquín is clearly called the *Culebras* by the eminent Danish writer, Carl Bovallius, on the map that illus-

trates his work on the Indian tribes of Talamanca (Map XXXV), as Friederischen had done before him Map XXXIII).

(4) INTERPRETATION OF SEÑOR PERALTA ACCEPTED BY PANAMA.

Señor Peralta, in his note of the 29th of September, 1900 (Doc. No. 418), addressed to Minister Delcassé, submitted his interpretation of the Award—which interpretation was not denied by the Arbitrator—stating that the frontier line shall run along the left bank of the Sixaola

“* * * to its conjunction with the Yorquín or Zhorquín (also called Sixaola, Culebras or Dorados) toward longitude $82^{\circ} 50'$ west of Greenwich * * *; it will cut the thalweg of the Tarire on the left bank of the Yurquín and continue due south along the divide of the watersheds of the Yurquín on the east and the Urén on the west; then along the divide of the Atlantic and Pacific watersheds; until near the ninth parallel of latitude north * * *.”

This interpretation stands as accepted by Panama in the Treaty of 1905 (Pacheco-Guardia. Doc. No. 431), which reads:

“From this point the dividing line will proceed by the left bank of said Sixaola River to the intersection of this with the Yurquín or Zhorquín River. Here the frontier line will cut the thalweg of the Tarire or Sixaola on the left bank of the Yurquín and will follow in a SOUTHERLY direction the watersheds, first between the basins of the Yurquín on the east and of the Urén on the west, and thence between the basin of the latter and the basin of the Tararia or Tilorio until arriving at the summit of the great cordillera that divides the waters of the Atlantic Ocean from

those of the Pacific Ocean. From this place the line will proceed in an east-southeast direction along the summit mentioned to a point called Cerro Pando
* * *

As may be seen, this is the same intermediate line that runs between the Sixaola and Pando hill, in no way different except that it is described with more detail in the treaty than in Señor Peralta's note, to which are added the words inserted after "the Urén on the west"—in order the better to describe the line dividing the waters as far as Pando hill—and the reference to the Tararia or Tilorio, which is the *Changuinola*.

This line accords with the second hypothesis for interpretation, founded on the Colombian acceptations, which has been already explained; that is, the interpretation holding that the names of Culebras and Doraces refer to the Sixaola River, and accords with the fact of present possession, as will be proved later.

(5) RESULT OF THE STUDY OF THE TREATIES WITH RESPECT TO THIS PORTION OF THE LINE.

Before entering upon a demonstration of the fact of possession, the conclusions to be drawn from the history of the treaties bearing on the second part of the line under discussion will be set forth; that is to say, the line from the confluence of the Tarire with the Yorquín to Pando hill.

These conclusions are twofold: First, none of the treaties entered into between Costa Rica and Colombia has gone beyond the Sixaola-Yorquín line; much less has any of them followed the east-west course of the Tarire to its westernmost sources; and second, in all of those treaties the effort has been made to reach the headwaters of the divisional rivers by running the line along the Main Cor-

dillera from northwest to southeast, between $9^{\circ}.02'.5$ and $8^{\circ}.35'$, north latitude, save in the case of the Treaty of 1856, which limits itself to crossing the cordillera by the shortest route, at $9^{\circ} 6'$ north latitude, going in a south-north direction toward the source of the Doraces River.

The first is demonstrated by what has been said concerning the two hypotheses based on the Colombian acceptations of the names of Culebras and Doraces, whether they refer to the Changuinola or to the Sixaola, or whether they are interpreted in the most unfavorable manner for Costa Rica.

As to the second, it is enough to recall attention to the facts that according to the Treaty of Bogotá of 1825, Costa Rica retained her traditional boundary in the great stretch of the Main Cordillera from the source of the Chiriquí Viejo to the source of the Chiriquí, Calobébora or *Culebras* River, properly so-called; that the Treaty of 1865 (Castro-Valenzuela) ran the line along the crests of that Cordillera, from that same source, passing by the hills of Picacho, La Playita, El Hornito and Santiago, to the headwaters of the Cañaveral or Cañas River which empties into the sea opposite the Escudo de Veragua; and that the Treaty of 1873 (Montúfar-Correoso) fixed the line to run from the source of the San Bartolomé River, passing over the Cordillera to meet the headwaters of the Bananos River, which empties into Almirante Bay.

In none of the treaties is a line made to deflect to the left of the Main Cordillera—from east to west—to seek out the source of any river.

II. THE FACT OF POSSESSION IN ITS RELATION TO THE SIXAOLA-YORQUÍN LINE.

(1) THE FACT OF POSSESSION FROM THE INDEPENDENCE OF COSTA RICA DOWN TO 1880.

By virtue of the Bogotá Treaty of 1825, the State of Costa Rica continued in possession of all the territories it had possessed as a province of Spain. Proof of this lies in the fact that in the preliminary conferences leading up to that treaty the Colombian Minister of Foreign Relations, Don Pedro Gual, proposed an *alteration* of the existing boundaries, and on the refusal of the Representative of Central America to accept the proposal, the former replied: "Well, then, * * * as to boundaries it is necessary to hold to the *uti possidetis* of 1810 or 1820, as may be desired" (Doc. No. 256). And further proof is to be found in Colombia's subsequent determination to invoke the *uti possidetis* of mere right (*de jure*) in opposition to the *uti possidetis de jure* and *de facto* urged by Costa Rica, Colombia thereby acknowledging that she lacked the possession presupposed by that principle of international law.

On the 30th of May, 1836 (Doc. No. 267), the Congress of New Granada decreed the occupation of the Territory of Bocas del Toro and on the 23d of the following September (Doc. No. 269), the Governor of the neo-Granadian Province of Veragua addressed a communication, in the name of his government, to the Government of Costa Rica, requesting the latter to withdraw the authorities it was maintaining in Bocas del Toro; therefore, there can be no doubt that Costa Rica remained in possession of that territory down to the moment of the forcible occupation. It should be observed that in that legislative decree *the exist-*

ing line between the two republics was indicated as the north-western without specifying anything but the extreme northern point—the *Cu'cbras River*—and the *direction* of the line, which terminated on the south 'n the Chiriquí Cordillera, and if to this be added the fact that by a further and supplementary decree, of 1837, the canton was organized into *two parishes*—that of Bocas del Toro to the *west*, and that of M'neral, to the east—the difference existing between the boundary prescribed by the usurpatory decrees of 1836 and 1837 and the one indicated by the Sixaola and Tarire River, can be easily understood.

The Republic of Colombia began by occupying only the island of Colón; then it proceeded, little by little, to extend its occupation along the coast, but not reaching the Changuinola, until, in 1869 and 1870, it overstepped that river and spread out over that part of the Sixaola region which was nearest the sea, without, however, passing beyond the right bank of the Sixaola or reaching the Yoruín.

When the Treaty of 1856 was signed, Colombia's possession did not reach as far as the Changuinola. That treaty, according to the report of Señor Fernández Madrid, had for its purpose to insure possession of Bocas del Toro. But the fact of possession could not have been of any great importance, as the Treaty of 1865 (Castro-Valenzuela) left to Costa Rica all the territories situated between Almirante Bay and the Main Cordillera as far as the Cañaveral River, and the Treaty of 1873 (Montúfar-Correoso) limited them by the Bananos River which empties into that bay.

After the failure of the 1856 treaty (Calvo-Herrán), Costa Rica, in 1859, prepared to aggregate to the jurisdiction of Moín all of the north coast from Tortuguero to Bocas del Toro, the Governor of Moín being possessed

of the power to appoint military and police magistrates; and, in 1860, undertook the construction of a railroad between Bocas del Toro and the Gulf of Dulce, entering into a contract with Mr. Ambrose W. Thompson for the work; a commission was then appointed by the President of the United States to verify the investigations as to the possibility of constructing such a road, which investigations it brought officially to the attention of said government.

The events occurring in 1869 and 1870 (Doc. Nos. 324, 325, 328-333), show that Costa Rica maintained functionaries who exercised jurisdiction in the region comprised between the Sixaola and the Changuinola. As a result of those events, the President of the State of the Isthmus, General Correoso, in a communication addressed on March 21, 1870, to the President of Costa Rica (Doc. No. 325), complained that the Captain of the Port of Moín had encroached upon "the Colombian village of Sixaola, situated upon the eastern side of that river * * *." And the Colombian Minister Plenipotentiary, Señor Pradilla, in his note of October 20, 1871 (Doc. No. 329), to the Minister of Foreign Relations of Costa Rica, stated that a duly constituted agent of the Costa Rican Government had attempted to exercise jurisdiction in the *village of Changuinola*, situated to the *west* of the Doraces River, and that "Colombia has at all times been in possession of Changuinola; and although Costa Rica also thinks it has a right to the territory in which this village is situated, such *possession* ought to be respected * * *, because it is to the interest of both Republics, in order to avoid complaints and reciprocal claims, to recognize their possessions in the condition in which they are now found, as long as their boundaries are not definitively fixed."

Nothing in the foregoing, however, prevented General Correoso from signing with Señor Montúfar the Treaty of 1873, above referred to, which fixed the boundary in the Bananos River, flowing into Almirante Bay.

(2) THE JURISDICTIONAL "STATUS QUO" OF 1880.

The question of the Burica cocoanut groves, which arose in 1875 and became aggravated, in 1879 by certain acts of violence, was the immediate cause that induced the two governments to enter the field of arbitration and to establish the *status quo* of 1880.

The Costa Rican Minister of Foreign Relations proposed to the Minister of Foreign Relations of Colombia, on the 25th of July, 1876, that, to bring about a definitive settlement of the boundary question, resort be had to the arbitration of a friendly nation, and stated at the same time that in the meanwhile, and because of failure to approve the 1873 Treaty, the *status quo* as to the divisional line—a straight line running between Punta Burica and the Escudo de Veragua—should be preserved.

While accepting the idea of international arbitration, Colombia remained silent with regard to the *status quo* until the note of April 20, 1880, written by the Secretary of Foreign Relations, Don Luis Carlos Rico (Doc. No. 352), in which, after apologizing for his government's failure to make earlier reply to that part of the note of 1876 which related to the *status quo* (answer delayed nearly four years), and after setting forth also the pretensions of Colombia respecting the Mosquito Coast, he said:

"* * * but for the purposes of the *status quo*, which both Republics have agreed not to alter, whilst the arbitral decision may not be carried out * * * the boundary between the two Republics * * * is

the following: upon the Atlantic side, the main channel of the River Culebras to its sources, continuing by a line along the crest of the range of Las Cruces to the mouth of the River Golfito * * *. This Government will consider any act of jurisdiction by that of Costa Rica on this side of those boundaries, as an act of usurpation."

Costa Rica replied in the same tone, insisting upon maintaining as the line of the *status quo* the one that ran from Punta Burica to the Escudo de Veragua, when there came the bellicose manifesto of September 6, 1880, from the President of Colombia, Don Rafael Núñez (Doc. No. 361), making known that the Senate of Plenipotentiaries had adopted the Conclusions therein reproduced (the first, third, fourth, fifth and eighth hereinbefore mentioned), and that a representative had been sent to Costa Rica to ask the latter to respect the jurisdictional *status quo* and the consequent withdrawal of the Costa Rican official located at Punta Burica.

The Eighth Conclusion of the Senate of Plenipotentiaries insisted that any proceeding destined to put an end to the question of boundaries should be preceded by the evacuation of any portion of the territory in which Costa Rica might have established her authorities beyond the limits marked out in the First Conclusion.

In the instructions given to Señor Holguín (Doc. No. 360), the envoy of the Colombian Government, he was cautioned to content himself with bringing about the immediate retirement of the Costa Rican authority located at the Burica cocoanut groves, but to refrain from a similar exaction with respect to the village of Isola, for, although it lay outside the Golfito River boundary, the village had been in existence six years after its establishment by Costa

Rica, without protest of any kind having been made; and the envoy was authorized to promise to Costa Rica, in the event that she should accede to the proposal, that he would enter at once upon negotiations for a definitive adjustment of the question of boundaries.

On the 10th of September, 1880 (Doc. No. 362), the Government of Costa Rica informed the Colombian Government that it had communicated to the Political Chief of the district of the Gulf of Dulce the following:

“The Government of this Republic, being about to enter into a definitive settlement concerning boundaries with that of Colombia, and both having agreed until the desired conclusion is reached that the jurisdictional *status quo* shall be preserved in the regions where differences may arise, I provide that you may restore things in the territory of Punta Burica to the state in which they were before July, 1879, without its implying, however, any recognition of rights upon the part of either of the two Nations.”

With this the Colombian Government was satisfied, whereupon the two governments proceeded immediately to the negotiation of the Arbitration Convention which was signed on the 25th of December, 1880.

It must be stated here that from the signing of the Treaty of 1873 (Montúfar-Correoso) the parties never returned to the discussion of the possessory-jurisdictional status of the region embraced between the Changuinola and the Sixaola; that the only conflict over the possessory-jurisdictional status with which the Senate of Plenipotentiaries and President of the Republic of Colombia concerned themselves in their Conclusions and manifesto, respectively, was that involving Punta Burica; that, in regard to Costa Rica's acquiescence in the *status quo* as a prerequisite to arbitration, Colombia announced her satis-

faction with the reply of that republic to the effect that *it referred only to the territory of Burica*; and that, consequently, in the region comprised between the Changuinola and the Sixaola, *the status of things remained as left in 1870 and 1871* when they were described by Señor Correoso and Pradilla from the viewpoint of Colombia's interests.

Attention must also be drawn to the importance given to the matter of *possession* by the Conclusions of the Senate of Plenipotentiaries. The First Conclusion asserts that Colombia has a perfect right of ownership and that she is in *possession* of the territory bounded by the Culebras River; whereas, it speaks only of her "*right*," without including possession, when reference is made to the *littoral* situated between the mouth of that river and Cape Gracias a Dios. The third declares that Colombia "*has been in uninterrupted possession* of the territory included within the limits indicated in Conclusion 1." The fifth states that the Colombian Government, with the consent of the Senate has exacted respect for the *status quo* with which the First Conclusion deals "until the boundary question is decided by arbitration or in some other friendly method."

According to the First Conclusion the divisional line is the one which has been frequently mentioned—"from the mouth of the *Culebras* River, in the Atlantic, going upstream to its source; thence a line along the crest of the ridge of *Las Cruces* to the origin of the River Golfito
* * *"

The river, then, which Colombia claimed under the name of *Culebras* was the one that bounded the territory of which she asserted to *be in possession*, and not a river foreign to that possession.

Therefore the *Culebras* River, the subject of such possession, could be none other than the Changuinola, according to the antecedents particularly set forth in Señor Pradilla's above-mentioned note of 1871, relating to the controversy over the village of Changuinola—or at most the Sixaola.

But in this last case, it must be understood by Sixaola the right bank of this river in its lower course near the coast, where was the nucleus of a Colombian village named "Sixaola," without going beyond the mouth of the Yorquín, from which river the lands possessed by some Colombians were far distant; that is to say, the *Sixaola* as then understood in Colombia, according to her official documents and her own maps—not the *Tarire* in its ascendant course from *east to west* as far as its sources, according to the description in the report of William M. Gabb (Doc. No. 582); *not the Tarire* going up-stream from the mouth of the Yorquín, where Colombia never had *possession* in any form whatever.

It should be noted that Gabb, who wrote in 1874 and 1875, never alludes, in either of his valuable works (Docs. Nos. 582, 583) to the *possession, occupation, or even a claim* of any kind, on the part of Colombia, in any part of the territory *between* the *Changuinola* and the *Sixaola* which that savant surveyed and investigated by order of the government of Costa Rica and under the protection of the local political and military Costa Rican authorities. Nor is it conceivable that in the course of four or five years events would have occurred that would have transformed the quiet possession enjoyed by Costa Rica in that vast region into clear, undisputed possession on the part of Colombia from the mouth of the Sixaola to its source, if by that river the *Tarire* or *Telire* is to be understood. The status of things in 1874 and 1875 was the same as that

existing in 1880, when the arbitration treaty was signed.

In September, 1888, Señor Don Joaquín B. Calvo, the present Minister of Costa Rica at Washington, was commissioned by his government to visit the region of the Sixaola and the canton of Talamanca in order to make a report concerning certain surveys carried on in that part of the country by engineers of the Compagnie Universelle du Canal de Panama.

In the important report (Doc. No. 551) which Señor Calvo prepared as a result of his investigation, he states that Colombia *never possessed*, on the Atlantic Coast any part of the territory situated to the west of Punta "Sorocta," or "Soróbeta," opposite Boca del Drago, except toward the end of 1869, when a Colombian functionary was in fact established in the small hamlet located on the right bank of the Sixaola's mouth. Señor Calvo adds that the Political Chief (Jeñe Político) of Moín, Señor Fábrega, re-established the authority of Costa Rica at that point, but that by reason of the change of government which took place in Costa Rica in 1870, Colombia had no difficulty in again establishing her functionary at the mouth of the Sixaola.

The author of the report goes on to state that by virtue of the occupation contemplated by Colombia, that republic took possession of the entire coast as far as the said hamlet, which was called "Sixaola;" but that, in spite of all his most careful investigations, he had been unable to find the slightest proof to show that Colombia had established her authority in the interior at any point between Boca del Drago and the southern bank of the Sixaola River; that at one time, however, it appeared that the place called "Guabito"—and even "Halobita," a little farther into the interior—had been looked upon

as the divisional point; that as Colombia had not exercised any jurisdiction away from the coast, it was not easy to determine what was the divisional line in the interior; but that it was nevertheless a fact that on the date of the report (September 19, 1888), the agents of the Costa Rican Government maintained the sovereignty of their country over the entire course of the Sixaola River and the authority of Colombia was exclusively confined to the point occupied by the hamlet of Sixaola.

Señor Calvo further states that in January, 1888, the Political Chief of Talamanca established as the jurisdiction of the Justice of Peace of "Guali," territory extending to the mouth of the Sixaola River and all of the waters of that stream.

He asserts in his report that this had been the status of things since 1870, and adds that he had never heard that the Colombian functionary located on the right bank of the Sixaola's mouth had ever pretended to exercise authority over the river, or over any point along its southern bank—much less to obstruct the free exercise of Costa Rica's sovereignty over the entire territory traversed by the Sixaola River.

(3) THE FACT OF POSSESSION FROM 1880 TO THE LOUBET AWARD.

The boundary question having been submitted to the arbitrament of Spain, and the Government of Costa Rica having proposed to that of Colombia the establishment, by mutual agreement, of a provisional frontier line pending the arbitral decision of the Spanish Government, the Sub-secretary of State in charge of the Colombian foreign office, Don Marco Fidel Suárez, addressed to the Minister of Foreign Relations of Costa Rica, the note of

the 16th of March, 1891 (Doc. No. 381), in which he declares the following:

“The provisional and transitory boundary cannot be *to the east of the Sixaola*, for that would be to disturb the actual possession that Costa Rica acknowledges in Colombia, and lose sight in the act of settlement of the purposes which impose that settlement. *As to the part west of the Sixaola*, although Colombia insists, in accord with the Additional Convention signed in Madrid by the Plenipotentiaries of this Republic and of Costa Rica of January 20, 1886 (Doc. No. 369), that its rights on the Atlantic extend to Cape Gracia a Dios, it does not complain if its actual possession be restricted, fixing the transitory limit nearer than that terminal. The Republic, then being guided by special sentiments of conciliation PROPOSES that the provisional frontier shall be the River *Doraces*, from its outlet in the Atlantic to its sources, thence following the *Cordillera de las Cruces* to the River *Golfito* and thence along the River *Golfito* to its outlet in *Dulce Gulf*.”

It is needless to say that if, in March, 1891, Colombia PROPOSED a provisional frontier line constituted by the course of the Doraces (Sixaola) River, as far as its source, it was precisely because the Colombian occupation of 1880 did not reach that point. Neither is it necessary to say that the PROPOSITION was rejected by Costa Rica.

It is quite evident that in describing the line proposed the Colombian government had before it, or recalled to mind the details of, the official map of the State of Panama prepared by Señor Ponce de León and his associate. In order that two sections of territory separated by a river (in this case the Doraces or Sixaola) may lie the one to the east and the other to the west, it is essential that such river should run from north to south, or from south to north,

for if its course lay, for example, from east to west, or vice versa, the said sections would lie the one to the north and the other to the south.

Now, supposing that in his note, Señor Suárez had taken the Sixaola instead of the Changuinola for the Doraces River, it is clearly stated that Colombia claimed nothing on the *western* side of the Sixaola, for that would have amounted to a disturbance of the then "*actual possession*" and an ignoring of the issues in the pending question, which were those already mentioned as involving the region comprised between the Sixaola and the Changuinola.

It may be further concluded that what Costa Rica and Colombia proposed in that exchange of notes was the establishment of a line that should coincide "in so far as possible, with the line separating the *actual possessions* of Colombia and Costa Rica * * * so that upon the determining of the same (line) the present condition of things will not be disturbed," as Señor Suárez frankly explained in his note. In connection with the fact of the possession which did not extend beyond that part of the eastern region near the sea, that note referred to the upper waters nearest the sea—that is, the first waters that may be met with on the way up the side of a mountain and those upper waters cannot be other than the course of the *Yorquin*.

The distinguished geographer, Monsieur Pittier, in his notes on geography of Costa Rica as published in the review "*Tour du Monde*," of 1892, stated:

"The frontier of the *status quo* which may be considered as imposed by the Government of Bogotá in as much as it lies very far from the boundary that

Costa Rica claims, goes up the River Golfito, a small tributary of the Dulce Gulf, thence follows the hills of *Las Cruces*, between the basins of the River Coto de Térraba and the Chiriquí Viejo, until it reaches the summit of the Main Cordillera, and thence goes down the northern watershed by the Rivers *Yorquín* (Zhorquín) and Sixaola."

In a note addressed by Don Julio Rengifo, the Colombian Minister at Washington to the Honorable Walter Q. Gresham, Secretary of State of the United States, on the 22d of February, 1894 (Doc. No. 401), there is a paragraph which reads:

"Both nations should respect the *status quo* established in 1881 [1880], which, for Colombia is law, and for Costa Rica a dead letter. As a recent practical case, I may cite, in proof of the foregoing statement, the course pursued by the present Costa Rican Minister of Foreign Affairs, Mr. Jiménez, who, four years ago, when he filled the same office, admitted that the *River Sixaola was the dividing line between the possessions of Colombia and Costa Rica; so that the eastern bank of that river belongs, incontestably, to Colombia, notwithstanding which, and in spite of the protests of the latter country, the Government of Costa Rica continues to place authorities in that region, thereby abusing the patient and upright attitude of my Government.*"

If by the Sixaola, the *Yorquín* is to be understood, the language of Señor Rengifo is perfectly intelligible; but it is meaningless if, by Sixaola, is meant the *Tarire*, going beyond the confluence with the *Yorquín*, for from thence onward the latter holds a course from *west to east*, and instead of the words "eastern bank," the words "southern bank" should have been used. In fact, to the east of the *Yorquín*, although at a great distance there existed, in

1894, several small nuclei of Colombian villages, whilst to the west of that river lay the capital of the Costa Rican Canton of Talamanca which was the center of several important settlements, ruled by the Government of Costa Rica without opposition from any source whatsoever.

In the report on the Foreign Relations of the Colombian Government, for the year 1894 (Doc. No. 402), the following paragraph appears:

“On the Atlantic side, the Costa Rican Government has definitively admitted that *the boundary of present possessions is formed by the Sixaola River*, so that it has no right to exercise acts of jurisdiction on the *right bank* of that river; but notwithstanding this, Costa Rican agents or individuals have recently made surveys and drawn up maps on this side of the Sixaola.”

Colombia would not have complained of the making of topographical studies and drawing of plans of the territory on the *right bank* of the Sixaola by order of the Costa Rican Government unless that river had been taken to be the Yorquín, for Costa Rica's possession was public and incontestable to the west and left bank of said river (the Yorquín), having installed in that region civil, military and ecclesiastical authorities in full and peaceful exercise of their respective functions.

(4) THE FACT OF POSSESSION FROM THE AWARD OF 1900
DOWN TO THE PRESENT DAY.

After the publication of the Award of President Loubet, several plantations were established, under the color of concessions by, or under the authority of, the laws of Colombia, at a place called “Gandokin,” between Punta Mona and the left bank of the Sixaola River's mouth.

Concerning this act of possession, the Panamanian Department of Government and Foreign Relations issued an order under date of August 2, 1904, and published in the Official Gazette of the Republic on the 23d of the same month (Doc. No. 430), in which the following appeared:

“Although by the arbitral award pronounced by the President of the French Republic, Gandokin (in the Sixaola region) forms part of the Panama territory, this award has not been executed yet, and, while this is not the case, the Government of this Republic *does not exercise jurisdiction at that place*, because it is situated within the limits of the disputed territory which originated the arbitration,¹ and because the agreed *status quo* thus demands. In this manner the Costa Rican Government is the actual possessor of the place in reference, in the same way as that of Panama is the actual possessor of part of the Costa Rican territory on the Pacific. The execution of the Award will give each sovereign the possession of the territory which belongs to it, and the *status quo* will then terminate. But meanwhile, as such is not the case, Gandokin will remain under the jurisdictional action of Costa Rica.”

The foregoing order is an explicit recognition by Panama of the *de facto* line respected by Colombia and Costa Rica.

The status quo as defined by the United States in 1909.—In the months of January and February, 1906 (Doc. No. 432), the Government of the United States transmitted to the Government of Costa Rica the complaints which had been brought before it by Mr. McConnell, in the name of the American Banana Company, against certain supposed abuses by Costa Rican authorities on the plantation

¹This last assertion is an evident error, as already stated, p. 198.

which that company had established, on the left bank of the Sixaola, under the laws of Colombia relating to undeveloped lands; that government, protesting against those facts, called on the Governments of Costa Rica and Panama to place themselves in accord concerning the jurisdictional *status quo*.

The Costa Rican Minister of Foreign Relations, Señor Don Luis Anderson, replied by notes of the 3d and 26th of May (Doc. Nos. 433, 435), stating that McConnell had unlawfully occupied lands pertaining to the Costa Rican domain, and had fraudulently introduced merchandise through the unauthorized port of Gandoca. And discussing the incident in the light of the Loubet Award he asserted that the territory about Gandoca and the Sixaola River, on the left banks of that river and of the Yoruquin had been always, and was at that time dependent upon the jurisdiction of Costa Rica, according to the *status quo* recognized by Colombia and Panama, and cited, in support of this assertion, the note of March 16, 1891 (Doc. No. 381), and the order of August 2, 1904 (Doc. No. 430), from which quotation has just been made.

Señor Anderson came afterwards to Washington as envoy extraordinary on special mission to treat concerning the pending boundary question, and secured the friendly mediation of the United States.

Having accepted the task, the mediating government defined its understanding of the *status quo* for the purpose of protecting the citizens of its country and exacting the corresponding responsibilities; whereupon the Secretary of State, Honorable Robert Bacon, addressed to the Government of Costa Rica the note of February 16, 1909 (Doc. No. 455), in which he said:

"Should, however, an adjustment of the controversy be delayed or no adjustment made in the near future, the Government of the United States will be constrained to the conclusion that the conditions existing for years and still existing are such that they force the United States in justice to its own citizens to treat the *de facto* line as the line to the north of which Costa Rica has jurisdiction and to the south of which Panama jurisdiction is recognized; in other words, to hold that, inasmuch as the territory north of the *de facto* line is left by Panama within the actual jurisdiction of Costa Rica, the United States must in the interest of its citizens treat it as Costa Rican territory and look to Costa Rica to remedy the annoying and embarrassing situation caused to the United States and its citizens by the absence of responsible jurisdiction in that quarter."

A similar note had been addressed to the Government of Panama by the Secretary of State, Mr. Elihu Root, on January 23, 1909 (Doc. No. 454).

Subsequent Controversy Between Panama and Costa Rica Over the "Status Quo."—The Minister of Panama, Don Belisario Porras, in his note of the 29th of May, 1909, addressed to the Costa Rican Minister of Foreign Relations (Doc. No. 458) asks for an explanation of the news he had received concerning the appointment of an inspector and commandant at arms in the Sixaola Valley which, "although occupied by Costa Rica," was adjudicated by the Award to Panama; and in connection with his protest the Minister makes the following important statement:

"Panama has on the right bank of the Sixaola, from its mouth where its first village is located, UP TO THE YORQUÍN, in fourteen others which existed before the Arbitral decision was pronounced, a popu-

lation which has not room enough and which it would have been possible to establish and spread out, with officials, political, administrative, judicial and fiscal on the left bank * * * AND IT HAS NOT DONE SO."

The Minister of Foreign Relations, Señor Fernández Guardia, replied on June 5 (Doc. No. 459), stating that the functionary in question was a subinspector of the treasury installed at the customs post of Guabito on the *left* bank of the Sixaola and accompanied by the necessary force to insure obedience to his orders; and that the object of this appointment was to prevent smuggling and oversee the activities of the United Fruit Company under its contract with his government, which had authorized that concern to establish depositories on the left bank of the Sixaola and to introduce merchandise through that point only.

This post is located opposite another post bearing the same name of Guabito on the right bank of the Sixaola, under the jurisdiction of Panama. They are connected by a railway bridge over that river which was then in course of construction by that company. These two places are to-day the seats of customs authorities with guard houses located at either end of the now completed bridge—a very evident proof of the presence of an international divisional line.

Señor Fernández Guardia reminded the Minister, in that note, of the Panamanian Government's resolution of August 2, 1904 (Doc. No. 430), favorable to Costa Rica, on the subject of the *status quo* in Gandokin or Gandoca, and said that a similar situation was then under discussion; that is, one involving "the *left* bank of the River Sixaola, which separates us from the Republic of Panama up to the intersection with the Yurquín or Zhorquín."

On this theory, and by the questions and assertions of Señor Porras concerning the frontier line of fact and law, the interesting controversy, which is reviewed in another section of this Argument, was maintained, dealing with the boundary question without, however, reverting to a discussion of the post of Guabito, but the Representative of Panama going so far as to put forth the strange theory that Costa Rica could not dispose of territory involved in the Loubet arbitration—a territory which, according to the pretensions of Colombia, had for extreme limits the Golfito River on the Pacific and Cape Gracias a Dios on the Atlantic—holding that Costa Rica's sovereignty thereover, that is, over all of her national domain, was in suspense whilst the demarcation remained undetermined.

The controversy was brought to an end by the note of Señor Fernández Guardia, dated the 22d of September, 1909 (Doc. No. 467), in which he recalled attention to the note of February 16 of the same year, from the United States Government, defining the *status quo*, and also quoted from the decision of the Supreme Court of the United States in the case of the United Fruit Company *vs.* the American Banana Company (Doc. No. 441) as follows: "The fact, if it be one, that *de jure* the estate is in Panama does not matter in the least; *sovereignty is a pure fact. The fact has been recognized by the United States, and, by the implications of the bill, is assented to by Panama.*"

From the foregoing it is quite apparent that Colombia and Panama have never had *possession* or exercised *jurisdiction* beyond the right bank of the Sixaola, upstream, to the Yorquín, even under an interpretation of the *status quo* most favorable to them.

(5) ESTABLISHMENT OF THE SIXAOLA-YORQUÍN LINE BY
THE POSSESSORY JURISDICTION HELD BY COSTA
RICA IN TALAMANCA.

Costa Rica, as a Spanish Province, discovered, colonized and evangelized the region known as Talamanca, and with that region was eventually recognized as an independent state. She retained the region in its entirety as far as its boundary on the Culebras River (taking the pristine and true acceptation of that name—the Chiriquí or Calobébora), but has, by a succession of events that began in 1837, gradually lost a large part of it. In that year Colombia commenced her gradual expansion over Costa Rican territory making use of the equivocal relating to the *Culebras*, and of a jurisdictional *status quo* which was not well defined and which has never been sanctioned by Costa Rica as covering the Atlantic watershed to the east and on the right bank of the Yorquín River.

The inaccuracies, deficiencies and general vagueness of the Loubet Award placed Costa Rica in grave danger of losing the part of the Talamanca region which still remains to her and has been respected by that *status quo*. But she has confidence in the belief that since the Honorable Chief Justice has undertaken to decide the boundary question with full knowledge of the case, he will bear in mind, among other considerations, the fact that whilst Colombia and Panama have never performed a single act of possession or jurisdiction beyond the right bank of the Sixaola River down stream from the mouth of the Yorquín, or beyond any part of the right bank of the Yorquín throughout its entire course, Costa Rica always had and still has possession and jurisdiction not only on the left

bank of the Sixaola from its mouth to its source, but over all of the right bank of the Tarire from its source to the Yorquín and, following the course of the latter up stream, over all of the territory situated to the left of the Yorquín itself as far up as the Main Cordillera.

To-day this section of the ancient Province of Talamanca constitutes a canton bearing the name of *Talamanca* which forms part of the Province of Limón. This canton, which has been organized for more than half a century, is administered by a political chief who maintains his residence at *Sipurio*, its capital, and forms an electoral district, the inhabitants of which participate in the election of members of the council of the Province of Limón, of deputies from that province to the national congress, and of the president of the republic.

The Canton of Talamanca comprises villages such as Sipurio and Indian hamlets located on the banks not only of the *Urén* but of the *Lari* and *Coén*, which lie to the south of the Tarire and to the west of the Yorquín, and which have always been under the Government of Costa Rica.

(6) LEGAL PRINCIPLES FAVORABLE TO POSSESSION AND APPLICABLE TO THE PRESENT CASE.

The importance in which possession is held by international law—and possession is conclusive when secular as has already been shown to be the case with Costa Rica—likewise maintains generally in the litigation of doubtful cases. This examination of the fact of possession will, therefore, be concluded by calling attention to the following principles of law enunciated in Title 170 of Book 50 of the Digest, which are applicable to the present case.

“Where cases are otherwise of equal strength, the party in possession is the stronger.” (*In pari causam possessor potior haberi debet.* No. 128.)

“Where the claims of two litigants are based on acquisition, the party showing priority of acquisition is preferred. (*Quo tiens utriusque cause lucri ratio vertitur, is praeferendus est, cuius in lucrum causa tempore praecedit.* No. 98).

“In a doubtful case, it is better to favor the party who seeks to retain what he holds than the party who seeks to acquire it.” (*In re obscura melius est favere repetitione, quam adventitio lucro.* No. 41.)

CHAPTER IX.

COSTA RICA IN THE FULL, UNRESTRICTED AND CONTINUOUS POSSESSION AND SOVEREIGNTY OVER THE CANTON OF TALAMANCA FROM THE DATE OF INDEPENDENCE TO THE PRESENT DAY.

- (1) ACCOUNT OF THE DISCOVERY, CONQUEST AND EVANGELIZATION OF TALAMANCA BETWEEN THE 16TH AND 19TH CENTURIES.
- (2) SUSPENSION OF THIS TASK DURING THE FIRST DECADES SUBSEQUENT TO THE DATE OF INDEPENDENCE.
- (3) EXPEDITIONS IN SEARCH OF GOLD MINES. MR. J. H. LYON.
- (4) TALAMANCA IS ANNEXED TO THE JURISDICTION OF PORT OF MOÍN. VISITS BY THE COMMANDANTS FROM THAT PORT.
- (5) ORGANIC LAW OF THE CANTON OF TALAMANCA.
- (6) THE CACIQUES OF TALAMANCA CONVERTED INTO FAITHFUL SERVANTS OF THE STATE.
- (7) ENUMERATION OF ACTS OF VARIOUS STATE OFFICIALS IN THE EXERCISE OF THEIR AUTHORITY OVER TALAMANCA.

FROM 1821 TO 1913.

- (1) ACCOUNT OF THE DISCOVERY, CONQUEST AND EVANGELIZATION OF TALAMANCA BETWEEN THE 16TH AND 19TH CENTURIES.

As Annex I of this Argument there is given a brief historical account of the Talamanca region, from the end of the 16th Century to the beginning of the 19th,

which brings out very clearly the fact that this province was discovered, conquered and evangelized with the full authority and the approval of the Spanish Crown, under the immediate care and exclusively dependent upon the Royal Audiencia of Guatemala, by various *Alcaldes mayores*, several governors and captains-general, and an Adelantado, all of Costa Rica, and very materially assisted by the self-denying friars who, like the Venerable Padre Fray Antonio Margil, known as the Apostle of Guatemala, always collaborated in that task so costly in money and blood.

(2) SUSPENSION OF THIS TASK DURING THE FIRST DECADES SUBSEQUENT TO THE DATE OF INDEPENDENCE.

After the proclamation of the independence of Costa Rica, it was but natural that the organization of the new State should wholly absorb its attention and the available resources, so that the situation of the natives of Talamanca necessarily remained for several decades in the same unsatisfactory state in which it was left at the time of the extinction of the Spanish sovereignty.

(3) EXPEDITIONS IN SEARCH OF GOLD MINES. MR. J. H. LYON.

Under the formal permission that was granted by the superior Costa Rican authorities, during these decades, expeditions made up of residents of the country, and even of foreigners, penetrated into the territory of Talamanca in search of gold mines, as the erudite Doctor von Frantzius has related in one of his admirable works.¹ But in

¹ "The Mines of Tisingal and of Estrella," in León Fernández, *Documentos*, Vol. II, pp. 35-38.

1859 the Government of Costa Rica roused itself from its dormant condition and made effective provision for the political administration of that to a certain degree neglected territory—a task that was greatly facilitated by the fact that an American citizen and ex-officer of his country's navy, Mr. John H. Lyon, had located among the aborigines for the purpose of trade. He lived there for more than thirty years, was treated by the natives with respect and affection, and became a great help to the government of the republic, of which he was the loyal and zealous agent for the work of civilization. The valuable services of Mr. Lyon were duly remunerated and there was conferred upon him, as a further reward, the rank of colonel in the militia of the republic (Doc. No. 548).

(4) TALAMANCA IS ANNEXED TO THE JURISDICTION OF PORT OF MOÍN. VISITS OF THE COMMANDANTS FROM THAT PORT.

By the Circular of March 10, 1859 (Doc. No. 314), it was ordered that there should be annexed to the jurisdiction of the Port of Moín, on the Atlantic Coast, the whole of the territory embraced between "*El Tortuguero*" on the north and "*Bocas del Toro*" on the south; and the military commandant of the port named was authorized to appoint and remove military and police judges in the settled localities, as well as to expel any evil-doers or any who were likely to wrong the natives.

Under that authorization the Governor Commandant, Señor F. J. Alvarado, visited the Canton of Talamanca in 1861 (Doc. No. 526), and traversing the greater part of it, by friendly measures, brought the caciques or native tribal chiefs under subjection. He instituted the office

of military *alcalde* and appointed Señor Iglesias to discharge its duties; whereupon the evil-doers who had infested the district fled therefrom and left the authority and the laws of the republic in full force and effect in that region (Doc. No. 526).

At the beginning of 1862 (Doc. No. 527), in order to complete the work of Commandant Alvarado, the Government of Costa Rica appointed Captain Don José Antonio Angulo as the Military and Civil Superior Chief of the Atlantic Coast, who was located for some time at Talamanca at the head of a substantial garrison, so that the territorial dominion of the State should be thoroughly established and consolidated—an object that was fully accomplished, as will be shown by the report of Captain Angulo (Doc. No. 529).

(5) ORGANIC LAW OF THE CANTON OF TALAMANCA.

In 1867 the Congress of the Republic passed a decree (Doc. No. 530) by which the executive power was authorized to appoint as political chiefs (*Jefes Políticos*) subordinate to the Governor of the Province of Cartago, such of the caciques of Talamanca as might be deemed desirable; these were to be compensated for their services out of the public treasury, with salaries in that law determined upon. The executive was also empowered to name one capable and well deserving person, under the title of "Director of the Reductions of Talamanca," who was to counsel and assist the caciques in the administration of those settlements, to propose measures most desirable for their civilization and to make such reports as might be asked for by the supreme government or by the Governor of Cartago; the allowance for such director was also fixed.

By this decree, which was called the "Organic Law of Talamanca," all the civil, military, police and penal regulations, as well as those relating to legal proceedings and of a religious or special character, were made that were required by the condition of those inchoate settlements; and, as it was very natural should have been the case, Mr. Lyon was named as the "Director of the Tribes," a position which, sometimes under that name and sometimes under that of "Political Chief," and again as secretary of the *jefatura* (office of the political chief) or as military commandant, he discharged to the entire satisfaction of his superiors until his death. Document No. 548 contains a brief autobiography of this civilizer of Talamanca, whose memory will always be cherished.

(6) THE CACIQUES OF TALAMANCA CONVERTED INTO
FAITHFUL SERVANTS OF THE STATE.

Dr. William M. Gabb, in his two valuable papers entitled, "Exploration of Talamanca" (Doc No. 582), and "The Indian Tribes and Languages of Talamanca"¹ (Doc. No. 583), which are elsewhere referred to in this Argument, vividly narrates the interesting transformation by which the Caciques of Talamanca—called "Kings" who were at one time the lords over the lives and property of their subjects, while preserving the appearance of the inherited authority they had received from their ancestors, in reality lost their power and became entirely subject to the authority and laws of the republic. This work was consummated through the tact and prudence of Mr. Lyon and with the pertinent and opportune counsel of Mr. Gabb, who lived for a year and a half among those moun-

¹Proceedings of the American Philosophical Society, Vol. XLV, No. 95. Philadelphia, 1875.

tains engaged in the scientific explorations entrusted to him by the Government of Costa Rica.

The domination of the Costa Rican Government, therefore, was from that time, and is to-day, as effective and complete in Talamanca as it ever was in the interior of the republic. This is positively stated by Dr. Gabb in his writings, and is shown by the numerous documents briefly referred to below, the detailed examination of which would be as inopportune as it would be tiresome.

(7) ENUMERATION OF ACTS OF VARIOUS STATE OFFICIALS
IN THE EXERCISE OF THEIR AUTHORITY OVER
TALAMANCA.

Official visits were made to the territory of Talamanca by Commandant Alvarado, by Commandant Angulo and by the Governors of the Province of Limón, for various purposes connected with their duties, as may be seen in Documents Nos. 526 and 561.¹

Table No. 4 contains a list of the persons who served in the office of Political Chief (*Jefatura Política*) of Talamanca, under appointment by the Government of Costa Rica, with a reference to the paper in which the respective appointment appears, and its date.

Some of the reports—many of them full of details of all kinds—made by the Governors of the Province of Limón, by the Political Chiefs and the Commandants of the Canton of Talamanca, by inspectors under special commissions, and by other officials, may be consulted by reference to the documents annexed to this Argument.² The report of Captain Angulo, of Señor

¹ Documents Annexed to the Argument of Costa Rica, Vol. 3, pp. 133, 294, 295, 306, 307, 316, and 352.

² Docs. No. 539, 540, 542, 543, 547, 549, 550, 552-556, 568, 569 and Vol. 3, pp. 330-333, 337, 351-358, 361, 370, 372, 378, 394, 395, 407, 410.

Corrales, of Padre Blessing and of Señor Calvo, are of special interest, the first named as being one of the oldest documents after independence. In this document (Doc. No. 529) the author recorded a great many details concerning the topography of the region, the number and the location of the Indian tribes, their industries and the condition of their agriculture, their habits and customs, a list of foreigners, and other information no less useful. The report of Señor Corrales (Doc. No. 557) was invaluable for the topographical data it contained as to the territory situated to the left of the Sixaola River, which had been investigated by him in order to ascertain whether or not it was possible to build a road overland between the Sixaola River near Suretca and Cahuita; it was also important for the information it contained regarding navigation of the said river and concerning many other points of no less moment. The report of the Padre Blessing (Doc. No. 558) was interesting on account of the facts he had gathered concerning the topography of the Upper Telire, which had not before been reconnoitred by any man of science or letters; nor has it been since. And the report of Señor Calvo (Doc. No. 551) was important because of the clear precision with which he stated the true condition of things with respect to the actual possession of the territory of Talamanca at the time of his visit in 1888; that is to say, about eight years after the first arbitration treaty was entered into between Costa Rica and Colombia and about two years after the second treaty between the same parties was celebrated, under the name of the Additional Convention of Paris.

In addition to these official visits of the political, civil and military authorities to the district of Talamanca, there should be taken into consideration the five Episcopal

Visitations that were made between 1881 and 1892 by the wise and valiant pastor of the flock in Costa Rica, the Illustrious and Most Reverend Dr. Don Bernardo Augusto Thiel, of beloved memory. A detailed account of these canonical visits will be found in the Documents Nos. 534 and 541; and they are important not only for the pious purpose especially sought by the self-denying pastor, but in the field of the many sciences which he cultivated at the same time with laudable zeal. Many of the most valuable historical facts gathered by Doctor Thiel in that region were afterwards made use of by him in his celebrated work entitled, "Monograph on the Population of the Republic of Costa Rica in the 19th Century," in which the census of Costa Rica appears for the years 1522, 1569, 1611, 1700, 1720, 1741, 1751, 1778 and 1801, taking into account the indigenous population of Talamanca as a dependency of Costa Rica.¹

There is filed herewith (Doc. No. 564), a list of the Catholic clergymen who, since 1881, by appointment from the *Costa Rican Ecclesiastical Curia*, held and exercised the post of pastor of the flocks in Talamanca, for whom the state, under the organic law of 1867, appropriated a suitable compensation in the national budget.

Repeatedly, for different reasons connected with the welfare of the residents of Talamanca, the Government of Costa Rica has deemed it necessary to send military expeditions into that region, and no obstacle was ever placed in the way of the satisfactory discharge of their mission. Beside those entrusted to Commandants Alvarado and Angulo, to which reference has been made, there may be

¹*Revista de Costa Rica en el Siglo XIX* (Review of Costa Rica in the Nineteenth Century) Vol. 1, pp. 6, 7, 8, 13, 16, 17, 19, 21, 23, 26, and 49.

noted: (1), the expedition of 1884, headed by General Don Federico Fernández (Docs. Nos. 538 and 545), as to which a report was made (Doc. No. 546); and (2), the one commanded by General Don Rafael Villegas in 1888 (Vol. 3, Doc. No. 561, pp. 287 and 288).

It was also needful to send out parties of a medical character, to combat various epidemics. This will be noted in the resolutions found in Vol. 3 of Documents, pp. 185, 186, 367, 368, 369, 370, 372, 382, 414.

In 1881 some Costa Ricans of the highest social position were confined to the district of Talamanca as political offenders, and the same thing occurred in 1884, as set forth in the government resolutions inserted in Doc. No. 538, Vol. 3, pp. 182 and 184.

Numerous resolutions affecting the postal service were issued and are to be found in the volume cited, at pp. 289, 297, 298, 302, 303, 304, 305, 306, 320, 322, 323, 327, 360, 372, 412.

Between Limón and Talamanca a service for freight and passengers was established, by means of a small national steamer, as appears by the resolution in Doc. No. 533, Vol. 3, p. 167.

With regard to the execution of the concessions granted by the state to railway corporations (Vol. 3, Doc. No. 533, p. 166), all the public lands situated to the left of the Telire River were declared inalienable. This declaration was subsequently revoked and, as a consequence, a considerable quantity of such lands on both sides of said river were appropriated by private individuals, as shown by Doc. No. 566.

Numerous resolutions for the opening, maintenance and repair of roads were passed at the instance of the local political authorities, for which work considerable sums of

money were expended from the national treasury, and to this end the labor of a part of the natives also contributed. The documents referring to this will be found in Vol. 3 at pp. 331, 332, 333, 337, 372, 375, 406, 407, 409.

The establishment of schools for primary instruction was also encouraged, the account of which service is set out in Doc. No. 563. A scholarship for Talamanca was founded in the Lyceum of Costa Rica located at the capital, and it was awarded on one occasion to a native youth by the name of Guillermo Gabb Lyon.

The administration of justice in Talamanca was under complete control, and provision was made for subjecting the higher local authorities to criminal proceedings in case of abuses committed in the discharge of their functions (Doc. No. 533, pp. 188, 189, 190; Doc. No. 544; Doc. No. 562, pp. 381, 415-416).

As occasion required the police force was frequently changed for the military, and *vice versa* (Docs. Nos. 538, 561).

To prevent exportations from the district without payment of the regular customs duty levied on rubber, the resolutions found in Docs. No. 533 (p. 164) and No. 561 (pp. 284, 285) were enacted. Exemption was granted from payment of customs duties in aid of religious purposes for that region, as per resolution in Doc. No. 561 (pp. 286, 287). As to contraband trade, especially in rubber exports, details will be found in Doc. 562, pp. 355, 372 and 373.

As to the regulations adopted for the sale of liquors, see Doc. No. 533, pp. 165-169.

A branch of the custom house at Limón was established later at a place called "Guabito," on the left bank of the Sixaola. (See resolution in Doc No. 561, p. 328).

The fines imposed by local authorities for offenses against police regulations were always administered by the municipal treasury of the city of Limón and invested for the benefit and improvement of the district from which they were derived. This will be seen by Doc. No 562, at pp. 389, 391, 393, 401 and 402.

In the elections held for higher officials, such as the president of the republic and deputies to congress, and also for the provincial officers, such as members of council or district syndics, Talamanca took part in conformity to law. This is shown by Doc. No. 562 at pp. 349, 350, 366, 384, 385, 391, 402, and by Doc. No. 565.

It would be tedious to continue the narration of the administrative measures taken by the supreme authorities of Costa Rica in the territory referred to, under the protection of the flag of the republic, and governed by its laws in the same way as every other portion of the national domain. Nor is it necessary to recapitulate here the facts presented in the present chapter, which show in the most conclusive way that could be wished the entire, full, public, unquestioned and indisputable exercise of the sovereignty of the Republic of Costa Rica over Talamanca, both prior and subsequent to the date of the arbitration conventions of 1880, 1886 and 1896.

CHAPTER X.

FINAL CONSIDERATIONS.

- I. CONSIDERATIONS RESPECTING THE DEFECTS OF THE LOUBET AWARD WHICH SHOULD MAKE IT INVALID.
- II. CONSIDERATIONS RESPECTING THE CONDITIONS WHICH SHOULD BE FULFILLED BY THE DIVISIONAL LINE AND THE CHARACTERISTICS OF THE LINES ACTUALLY ASKED FOR.
 - (1) CONDITIONS REQUIRED FOR THE DIVISIONAL LINE, ACCORDING TO THE INTENT OF PRESIDENT LOUBET.
 - (2) THE LINE OF THE PUNTA MONA SPUR FAILS TO MEET SUCH CONDITIONS, ESPECIALLY THAT WHICH REQUIRES IT TO BE A NATURAL LINE; CAUSES OF CONTRADICTIONS IN THE AWARD.
 - (3) THE LINE OF THE TILORIO OR CHANGUINOLA UNITES ALL THE CONDITIONS REQUIRED; EQUITY.
 - (4) THE SIXAOLA-YORQUIN LINE AS THE MAXIMUM ASPIRATION OF COLOMBIA AND ITS CONFORMITY WITH THE STATUS QUO.
 - (5) THE DIVISIONAL POINT ON THE ATLANTIC.

I. CONSIDERATIONS RESPECTING THE DEFECTS OF THE LOUBET AWARD WHICH SHOULD MAKE IT INVALID.

The present Argument will be brought to a close by some final considerations deduced from what has been stated regarding the two following points: first, the defects of the Loubet Award which would invalidate it; and second, the conditions to which the divisional line ought to conform and the characteristics of the lines actually asked for. A mere outline will be given so as not to repeat what has been fully set forth in the corresponding chapters; and these can be readily found by reference to the respective headings, which taken together, constitute a summary of the Argument.

The result of the latter is that the Award of President Loubet was defective on account of: (1) *ultra-petita* and inconsistencies in the decision; (2) errors and deficiencies therein and (3) inequality of treatment in the proceedings prior thereto.

Although the first two defects have been repeatedly discussed the second must be dwelt on at some further length. The third has been referred to merely, and then only in explaining the history of the arbitration; it must be taken up now because of its importance in connection with a full understanding of the Award.

The acceptance of the arbitration by the President of the French Republic took place on June 16, 1897. With that date began the term agreed on during which the respective demands and answers of the parties were to be submitted. On September 16, 1899, the discussion *was closed*, under the provisions fixed in the arbitral compact. Notwithstanding this, however, on April 19, 1900, M. Poincaré, the counsel for Colombia, signed his Second

Memorandum—the third on behalf of Colombia—to which the decision makes reference. In addition to this, there was an opinion dated March 25, 1900, by the learned Spanish lawyer, Señor Don Antonio Maura, a Deputy in the Spanish Cortes, former Minister of the Colonies, and President of the Royal Academy of jurisprudence at Madrid, which opinion *was cited in the decision*. Another opinion was presented, which was written by Don Federico de Castro, Dr. Don Antonio Mejías and Dr. Don Francisco Pagés and approved by the illustrious College of Advocates of Seville, as appears by the certificate attached by the Dean of the College, Don Nicolás Gómez de Orozco, on April 13, 1900; this one, however, was not cited in the Award.

Apart from these, there was submitted on behalf of Colombia a *Fourth Memorandum*, dated July 20, 1900, and signed by Monsieur Poincaré; this bore the title of a "*Résumé des Conclusions de la Colombie*," and begins after the following fashion:

"Au moment de voir expirer les délais fixés pour la préparation de la sentence, nous croyons devoir résumer, en quelques mots, les conclusions de la Colombie."¹

A further volume, entitled *Résumé Chronologique des Titres Territoriaux de la République de Colombie* made its appearance; but the date of its submission, however, is unknown. It bore no signature, but from a reference made by Señor Silvela in his Memorandum at page 59, it appears to have been the work of the Minister of Colombia in Paris, Señor Betancourt. *The volume was cited in the*

¹At the moment when the delays allowed for the preparation of the decision are about to terminate we think that we should sum up, in a few words, the conclusions of Colombia.

decision and was in itself an extended argument in favor of Colombia. It contained a letter addressed to Señor Betancourt by Don Marcos Jiménez de la Espada in praise of the documentary showing made by Colombia in the litigation, the author claiming to be an expert in this field by virtue of investigations, made a long time before, as a member of the Royal commission appointed by the Spanish Government to examine this very question. It also included two certificates by Don Rafael Torres Campos—one concerning the *capitulación* of Diego Gutiérrez, and another relating to the *cédula* of July 18, 1560—and the opinion of Dr. Don Simón de la Rosa y López and his collaborators, which was *cited in the Award*.

This work entitled "Territorial Titles of Colombia," enumerated a great many documents, part of which were known to the Representative of Costa Rica, having been published by himself or his predecessor, Don León Fernández; on the other hand, however, it embraced documents *absolutely unknown* to the Representative of Costa Rica and which he had no opportunity to examine—not even after the rendition of the Award—inasmuch as they consisted of originals and copies that were withdrawn by the party who produced them. To these documents Señor Peralta referred on page 175 of his work, entitled: *La Géographie Historique et les Droits Territoriaux de la République de Costa Rica* when he said:

"* * * and the advocate of Colombia had no ground for questioning them (the veracity and the good faith of the Republic of Costa Rica), by the use of incorrect translations of mutilated documents, *of which he placed before the eye of the reader no original or complete text, contenting himself with a reference to a documentary collection which, at the present moment (July 24, 1900), IS STILL A SECRET.*"

It has been stated elsewhere in this Argument that on July 24, 1900, in a note addressed by the Representative of Costa Rica to the Chairman of the Examining Commission, Ambassador Roustan, the former said (Doc. No. 410):

"I also take this occasion to observe to Your Excellency that *up to this date the Representative of Costa Rica has not received any communication, official or otherwise, of the printed volume of documents translated and annotated by Colombia, neither a list of those documents, nor the expert reports or documents ordered by the Republic of Colombia and consequently prejudiced.*"

A few weeks later the decision was rendered without paying the slightest attention to the respectful observation (really in its essence a severe criticism and protest) by the Representative of Costa Rica. The numerous geographical and historical mistakes in the Third and Fourth Memoranda of Colombia by Monsieur Poincaré; in the Opinions by Señor Maura and Señores Castro and de la Rosa, and colleagues; in the certificates given by Señor Torres Lanzas; in the letter by Señor Jiménez de la Espada; and, above all, in the enormous number of documents commented upon by Señor Betancourt, were left without correction and naturally had an important influence on the mind of the Arbitrator.

It therefore follows that the arbitral decision was defective because there was *no opportunity for answer or defense*; and not only was there a violation of the legal principle of equal opportunity for defense by both parties litigant, but it broke the rule established in Article 4 of the Arbitral Convention of 1896, to which the arbitration was subject. That rule being:

“The Arbitrator SHALL COMMUNICATE to the representative of each government the allegations of the opposite party, within three months after their presentation, IN ORDER THAT HE MAY REBUT THEM within the course of the six months following.”

It is evident that the case was closed when the respective replies were submitted; and, furthermore, that if memoranda, opinions, documents and other proofs were taken into consideration and cited in disregard of the rule referred to, it was not proper to proceed in that manner, to the advantage of one of the parties (the party producing the paper) and to the manifest detriment of the other, who was afforded no opportunity to examine nor to answer it.

Any one of the defects pointed out, whether of “*ultra petita*” or inconsistency in the decision, mistakes or deficiencies in the same, or lack of opportunity to make defense in the course of the proceedings, in violation of what was agreed upon for the arbitration, would be enough to invalidate the Award—still more so if there was a combination of these three classes of defects, as happened in this case.

The formula suggested by the Secretary of State, Mr. Knox, and accepted by both parties, set forth that the Honorable Chief Justice was to come to a decision “under the established principles of International Law.” And although the Convention of Washington in that same year substituted for that phrase the generic one of taking “into account all the facts, circumstances and considerations which may have a bearing upon the case,” there can be no doubt that the principles established by international law were embraced, not only by the general character of this latter expression, but also by the fact

that it was expressly declared by the representatives of both republics, at the time the treaty was formulated, that it was equivalent to the formula of Mr. Knox (Doc. No. 471).

The established principles of international law in regard to the nullity of awards, in cases where they are tainted with the defects that characterize President Loubet's Award, are so well known and conspicuous that time need not be taken to cite the legal doctrines laid down in such case.

II. CONSIDERATIONS RESPECTING THE CONDITIONS WHICH SHOULD BE FULFILLED BY THE DIVISIONAL LINE AND THE CHARACTERISTICS OF THE LINES ACTUALLY ASKED FOR.

(I) CONDITIONS REQUIRED FOR THE DIVISIONAL LINE, ACCORDING TO THE INTENT OF PRESIDENT LOUBET.

The obvious understanding of the frontier line, as intended by President Loubet, is that it ought to have followed, and must conform to, the following conditions:

- (1) It must not go outside the disputed territory;
- (2) It must be based upon the principle of the *colonial uti possidetis*;
- (3) It must be in accord with the historical antecedents;
- (4) It must be determined by the spirit of conciliation and good understanding shown by both of the parties;
- (5) It must be adapted as far as possible to the possessory and jurisdictional situation;
- (6) It must be clear, natural and without any incumbrance;
- (7) And, therefore, it must be just and convenient.

The first five of these conditions are derived from what has been shown at length in the discussion of the territory in dispute, and from the opinion and intent of President Loubet in the settlement of the questions agreed to before him, and the note by Minister Delcassé in answer to that of Señor Peralta.

The sixth condition is a result of what was expressly agreed upon for the arbitration and the purpose of President Loubet as revealed in his decision.

Article I of the Arbitral Convention of 1880, declared to be still in force by that of 1896 when it submitted the litigation to the decision of the President of the French Republic, provided for

“* * * the designation of a line which shall divide for all time and *with entire clearness* the territory of the former (Costa Rica) from the territory of the latter (Colombia), each one remaining in the full, quiet and peaceful dominion, so far as respects the same between themselves, of *all* the land which is left on its side of the aforesaid line, upon which there is not to remain any *charge* or special burden in favor of the other.”

For the frontier line to be clear and leave all the land of one party well differentiated from that of the other, and to prevent questions arising from an artificial division of a common ground, such a line must be a *natural one*; that is to say, it should follow directions indicated by natural characteristics, such as the courses of rivers and mountain ranges. It was in this way that Colombia and Costa Rica, in all the amicable arrangements which they undertook, always understood their frontier must be located; and so President Loubet understood it when he designated a natural boundary fixed by the supposed spur or cordillera from Punta

Mona and the range of the watershed between the Atlantic and Pacific, and it was just because he sought for a boundary that should be a natural one, and because the mountain line presented itself as clearer than that of the river in this case, that he committed the fundamental error of his decision.

President Loubet's intent that the frontier line should be *a natural one*, has been recognized by both of the parties to the litigation. Señor Peralta, in his note of September 29, 1900, to Minister Delcassé (Doc. No. 418), when he submitted to the Arbitrator the Costa Rica's interpretation of the Award, said that: "It responds perfectly to the desire to establish with certainty and stability a natural frontier." Colombia's diplomatic representative in Costa Rica, Señor Marroquín, in a communication addressed to the Minister of Foreign Relations of the latter republic on February 12, 1901 (Doc. No. 424), suggested to him that the execution of the decision could be proceeded with at once, without the need of prior arrangements, by reason of the fact that the demarcation indicated by the Arbitrator was a natural one, "* * * as it is formed by the summit of ranges and cordilleras." And in another communication of the 27th of the same month (Doc. No. 425), he announced that his government was about to take possession of the lands adjudicated (a proof that it had not held them theretofore), as the executory character of the Award offered no difficulties, "* * * especially when the frontier is marked by boundaries or natural objects, such as mountains, rivers or the like."

As a result of all this the sixth condition has been formulated to the effect that the frontier line ought to be clear, natural and without any incumbrance.

With regard to the seventh condition—providing that this line ought, therefore, to be just and convenient—it may be deduced from the fulfilment of all the preceding conditions, from the declaration made by President Loubet in the caption of the Award—that he had sought to rely upon “the principles of law”—and also from the statement made in the Washington Convention of 1910, by the representatives of both republics, that they were “* * * prompted by the desire to adjust in an adequate manner the differences on account of their boundary * * *.”

The seventh condition, moreover, is supported by the lofty considerations expressed in the preamble of the Pacheco-Guardia Treaty of 1905 (Doc. No. 431), in the following terms:

“The Governments of the Republics of Panama and Costa Rica * * * animated by the desire of binding and strengthening the fraternal relations that happily exist between the two, and considering that one of the most expeditious and efficacious means for securing the end desired is that of fixing in a definitive and solemn manner the frontiers that bound their respective territories, *consulting in doing this not only their reciprocal sentiments of friendship, but also the convenience of both countries*; that by virtue of the separation of the Isthmus, which took place November 3, 1903, *circumstances have profoundly changed*, since the period when the arbitral judgment was delivered hereinbefore mentioned, to those of to-day; that these circumstances *constrain* the two Republics to establish a *frontier line that shall better accord with their present and future interests*; that the cordial sentiments that animate the signatory Nations and the common desire that their development, prosperity and progress *may be continued without any hindrances*, rather with the support and collaboration of each, show the desirability of *consulting in the new tracing*

the desires, aspiration and needs of both countries; that being inspired by a criterion of conciliation and good understanding in order to establish the basis to which the tracing of the frontiers must be adjusted, the Republics of Costa Rica and Panama submit as is due to the revered opinion of the High Judge who tried the arbitral proceeding; by reason of all which the parties mentioned have resolved to celebrate the following treaty * * *."

(2) THE LINE OF THE PUNTA MONA SPUR FAILS TO MEET SUCH CONDITIONS, ESPECIALLY THAT WHICH REQUIRES IT TO BE A NATURAL LINE. CAUSES OF CONTRADICTION IN THE AWARD.

The physical impossibility of the line along the counterfort or mountain range from Punta Mona was easily demonstrated, for the very simple reason that no such counterfort or mountain range existed. But even supposing they had existed, it would still have been impossible to accept that divisional line, since it did not conform to any of the conditions above set forth, except that requiring it to be a natural boundary—provided such a counterfort has existed.

It was entirely outside of the disputed territory, being beyond the farthest limit claimed by Colombia; it was located at a very great distance from the line of the colonial *uti possidetis*, which Colombia acknowledged to Costa Rica in the Treaty of Bogotá, in 1825; it did not respond to any historical antecedent, either before or subsequent to independence; it was never cited thereafter in the negotiations to secure an amicable settlement, nor did it conform, in the slightest degree, to the possessory and jurisdictional situation. Moreover, it was obviously unjust, and seriously objectionable from the viewpoint of good international relations, to strip Costa Rica of her sovereignty over the

territory embraced within the angle fixed by the supposed counterfort, and the crest of the Main Cordillera, to the line of the *status quo*, and to change the nationality of the people who lived therein without any legal title or any act of possession to give an appearance of fairness to such spoliation.

The result, therefore, was a manifest contradiction between the conditions to which the divisional line should conform, (according to the intent of President Loubet) and that which it appears he indicated in his decision. Now, how shall this contradiction be explained?

It has been proved that the purpose of the decision was to establish as a divisional line the mythical *Culebras* River, the mouth of which Colombia has sought most tenaciously, ever since 1836, to maintain as the common boundary of the two contending republics; and that this boundary met several favorable considerations in the mind of the Arbitrator to wit:

(1) The tradition of the geographical charts of the second half of the 18th century, beginning with that of D'Anville, in 1746.

(2) The acceptance of the Doraces River as a boundary by the Treaty of 1856—a stream that for many Colombian writers, though rather equivocally, was synonymous with *Culebras*.

(3) The assertion by the Senate of Plenipotentiaries, in its Conclusions of July 13, 1880, that Colombia held *dominion* and *possession* over the territory that extended to the *Culebras* River.

(4) The possessory and jurisdictional *status quo* mutually recognized by the two countries as the basis of the Arbitration Treaty of 1880. It is probable that the Arbitrator took the *Culebras*, *Doraces* and *Sixaola* Rivers

to be a single stream, as the Colombian authorities maintained during the latter part of the discussion.

It is natural to suppose that as a guide for his action the Arbitrator must have consulted geographical maps of the frontier region and, more especially, the *official* charts submitted as proofs by one or other of the governments. Among those shown by the Colombian Government it was natural there should be found the *Carta Corográfica del Estado de Panama* (Chorographic Chart of the State of Panama), by Ponce de León and Paz (Bogotá, 1864); and also the *Atlas Geográfico e Histórico de la Republica de Colombia* (Geographical and Historical Atlas of the Republic of Colombia), by Señores Paz and Pérez (Paris, 1889.) These charts then had, and still have, an official character.

Not only in the first named, but also in those contained in the Atlas filed herewith, the frontier line between Costa Rica and Colombia appears to have its starting point on the Atlantic ocean, at the outlet of a river called "*Culebras or Doraces*," to the south of Punta Careta. This stream takes its rise on the heights of the Main Cordillera which divide the waters of the two oceans, and its course follows a direction approximately SOUTH-NORTH. The outlet of the river is found at $82^{\circ} 50'$ west of Greenwich and $9^{\circ} 41'$ north latitude.

As the river referred to forms the frontier between Panama and Costa Rica, according to the official map of Panama cited above, and conforms to the other maps mentioned, the Panamanian territory extended as far as the right bank of the stream indicated; but the left bank, from the source of the river to its outlet into the

sea, with all its tributaries on that side, appears upon said map in blank, with a legend in very distinct letters reading: "LIMITE CON COSTA RICA" (Boundary with Costa Rica).

The place where this Culebras River has its origin is one of the summits of the Main Cordillera, according to the official map of Panama, and is distinguished as follows:

9° 06' North Latitude and 82° 58' 30" Longitude West of Greenwich. This place is situated at 4' 30" northwest of Cerro Pando.

It will, therefore, be seen that the geographical meridian of the sources and that of the outlet of the Culebras River, are not very far apart, inasmuch as the river runs, in a general way, from south to north—or nearly so.

On the Pacific slope the Arbitrator was led by cogent reasons to select, as the extremity of the frontier Punta Burica, which connected with the rest of the frontier, not by an air line, but by the divisions of the waters flowing into the Chiriquí Viejo from those that flow into the Gulf of Dulce. If it had been an air line, the crest of the Main Cordillera would have been a straight line with a direction almost *north-south*; and the natural line selected—that of the division of the waters—varies but little from that course, if it be taken into account that the farthest branch of the Chiriquí Viejo rises in the Pacific watershed of the very summit on the Atlantic slope of which the Culebras River takes its rise, as it is represented upon the official map so frequently mentioned.

Adopting, then, as the extremities of the general frontier line on the Atlantic and the Pacific, respectively, the outlet of the Culebras River and Punta de Burica, the result would be a general course for the frontier of nearly *north-south*, a direction which was given to it from the most

remote times in the colony—when for instance, the Dukedom of Veragua was assigned as its boundary *upon the west* a geographical meridian and when, on the creation of the Royal Audiencias of Guatemala and Tierra Firme, there was fixed for the territory of the former, as its eastern boundary, that of the Audiencia of Tierra Firme; and to that of the latter there was given for its *western boundary* the territory of the Audiencia of Guatemala.

It is clear that the line of separation of the two territories which were reciprocally bounded upon the *east* and *west* had to run from *north* to *south*.

With these antecedents fully confirmed by the maps that have been cited from the Geographical and Historical Atlas of the Republic of Colombia, it was perfectly natural and easy of explanation that the Arbitrator, intent on doing justice, and without going in the least beyond the territory submitted to his jurisdiction, should take as a guide in fixing the frontier between Costa Rica and Colombia, in the Atlantic portion, the stream indicated on the official Colombian maps as the territorial limit of the portion over which Colombia seemed to be exercising *dominion* and *possession* and on the Pacific side, the line separating the waters of the Chiriquí Viejo from those of the Gulf of Dulce, and between the two watersheds the division of their respective waters.

With what seems to be a slight difference, which will be considered directly, it was in this way that the Arbitrator made up his Award; he thought to satisfy the aspirations of Colombia upon the Atlantic without at the same time disregarding the possession of Costa Rica, and the just territorial rights of Costa Rica on the Pacific without detriment to Colombia in that region.

But here two serious and unforeseen difficulties present themselves:

(1) The first arises out of the fact that the decision did not take as a guide or the frontier line on the Atlantic slope (as it was intended) the channel of the Culebras or Dorados River, which, on the Chorographic Map of the Republic of Panama, separated the territories of Panama and Costa Rica, but, instead of such channel adopted as the basis for the frontier an imaginary counterfort closing the valley of the river on its left side; this counterfort unquestionably would have belonged to Costa Rica in the character of undisputed territory had it existed, and would have been consequently excluded from the jurisdictional power of the judge—but surveys subsequent to the decision have shown that its supposed existence was not in accord with the truth. So that, to show that the judgment was defective because it went *beyond the power* granted, no other proof is needed further than the chorographic map mentioned, on which existence of this defect is clearly demonstrated.

(2) The other very serious difficulty arises from the inaccuracy of the official chorographic map of the State of Panama, by Señores Ponce de León and Paz, as well as all the other official maps included in the Geographical and Historical Atlas by Señores Paz and Pérez. All of them attribute to the Culebras or Dorados River a *south-north* course, as already explained. But the Arbitrator did not designate the frontier river by giving it the name of *Culebras* or *Dorados*—a name unanimously bestowed upon the river separating the territories and jurisdictions of Costa Rica and Colombia, by the Colombian geographers—particularly Codazzi, Mosquera and Pérez—by the Colombian cartographers, Ponce de León and Paz, by the Senate of Plenipotentiaries of Colombia, by the Colombian Minister of Foreign Affairs, Señor Rico,

in the instructions given to Señor Holguín for the Treaty of 1880, by the President of Colombia, Doctor Núñez, in his historic manifesto, and, finally, by a multitude of official documents of that republic, prior and subsequent to the said treaty. The Arbitrator did give that river the most modern of its synonyms (according to the Colombian nomenclature) of *Sixaola* or *Tarire*. This latter river, for the greater part of its course—or at least from the junction with the Yorquín going upstream—never has received the name of *Doraces* or *Culebras*, and as a matter of fact has a course absolutely distinct from the Culebras River, since it runs from *west* to *east* and has its sources in the Main Cordillera, within territory exclusively Costa Rican, to the east of the Peak of Chirripó Grande and about fifty-nine minutes to the westward of its outlet, which as before stated was the point of departure for the frontier on the official maps of Panama with a direction north-south.

Now, the result of all this is that while the intention of the Award was to lay down a *north-south* frontier, its wording really designates an *east-west* frontier, exactly at right angles to the direction intended, thereby invading territories obviously excluded from the contest. Diagram I, will explain better than any words the very great mistake incurred by reason of the imperfection of the maps relied upon by the Arbitrator as guides for his decision. All of the area included within the quadrant of the rectangle which, having its apex at the mouth of the *Culebras* River, is formed by (a) the line that represents the course of that river in conformity with the official Colombian maps, and (b) the line that represents the real course of the *Tarire* River on the ground, was and is the exclusive property of Costa Rica, and never was submitted to the hazard of litigation. And yet, in order to take in the entire region

west of the vast basin of the Tarire River, it is now sought by the Panamanian interpretation of the Award to wrest from Costa Rica not only all of the area embraced within the quadrant mentioned, but the adjacent drainage area upon the north of the Tarire River.

When, after the Award was pronounced, the Arbitrator had an opportunity to recognize the enormous mistake committed, he thought it best not to indicate on a map the course the frontier line ought to pursue; for if official maps, prepared by commissions of celebrated chorographers had led him into this momentous error, it was but natural he should have still less confidence in maps that were not official and much more modest in appearance. He contented himself with being the first to proclaim that it had never in any way entered his mind to concede to Colombia land not embraced within the dispute, and the first to call upon the parties to get together in an equitable arrangement that would rectify the injustice of the decision.

In concluding, with respect to the identification between the *Culebras* and *Tarire*, or *Sixaola* Rivers, attention is called to Doc. No. 639, as evidence that the synonymous appellation of the rivers mentioned is absolutely erroneous. If the table contained therein is analyzed it will show that to the *Tarire*, or *Sixaola* River of the present day, the mapmakers of the 17th and 18th centuries almost invariably gave the name of "*Rio de los Talamancas*;" and even in the 19th century, at the middle and toward its close, the same denomination appears to have been used, the total number of the maps upon which it appears numbering twenty. In eight of the maps mentioned in this table—six of them belonging to the 19th and two to the present century—the river referred to received the

name of *Sixola*, *Sicsanla* or *Sixaola*. It was called *Telire* or *Sixaola*, on seven maps bearing dates near the close of the 19th century, and *Rio Sics* (the root of *Sixola*) on five maps of the middle of the same century. It was given the name of *Telire*, *Tarire*, or *Sixola* upon three maps of the beginning of the present century and the name of *Bananos* on two maps of the beginning and middle of the 19th century. It was also called *Tiribi* or *Tiribee* on four maps dated at the middle of the last century; and, lastly, the river was called *Tiriri*, *Estrella*, *Telire* and *Tarire*, in charts dated in 1620, 1775, 1886 and 1911, respectively. All of which shows that the designations of the "*Rio de los Talamancas*" derivated from the name that Don Diego de Sojo gave to the city of *Santiago de Talamanca*, founded by him on one of the margins of said river in the year 1605—and the denominations of *Telire*, *Tiribi*, *Tarire* and *Tiriri*, as well as *Sics*, *Sixola* and *Sixaola* were synonymous—the most remarkable fact of all being that the river aforesaid does not appear on any map of non-Colombian origin under the name of *Culebras*, which the exigencies of this case have led the Colombian authorities to officially attach to the *Tarire* or *Sixola*.

(3) THE LINE OF THE TILORIO OR CHANGUINOLA UNITES
ALL THE CONDITIONS REQUIRED; EQUITY.

The Changuinola line is embraced within the disputed territory. If this river is not the true *Culebras* or *Chiriquí* of the *colonial uti possidetis*, it was nevertheless called the *Culebras* River, although mistakenly, by D'Anville in the 18th century, and by his copyists down to the beginning of the 19th century; so that this must be understood as the one to which the usurpatory neo-Granadian Decree

of 1836 referred, when the latter extended the boundary of the territory of Bocas del Toro northward to its outlet.

The history of the nomenclature of the *Changuinola* River of the present day, starting from the 16th century, is summed up in a table contained in Doc. No. 637. This table shows that this river was given the name of "*Estrella*" by its discoverer, Juan Vázquez de Coronado; and that this was the name exclusively employed from 1564 down to 1676. The *Ingeniero Visitador* (inspecting engineer), Díez Navarro, gave it that name in an official report in 1771 (Doc. No. 240). In four geographical maps of 1715 and 1733, the river was designated by the name of "Quemados;" but in 1746 the celebrated geographer D'Anville gave to it by mistake the name of "*Culebras*," and it happened that this appellation was followed in new maps subsequently published, down to 1816. From that time forward no one undertook to apply the name of "*Culebras*" to the ancient *Estrella* (the present *Changuinola*), which was sometimes called the *Tiribi* and *Tilorio*, or *Tararia*, or *Dorados*; the related names of "*Chánguene*," or "*Changuinola*" finally prevailing. Between 1816, the date of the last map that applied to it the name of "*Culebras*," and 1836, the date of the decree issued for the occupation of Bocas del Toro, the table shows only the name of "*Tiribi*" (*Tiribee*), a very suitable one, since the tribe of Indians which lived upon its banks were thus known. The designations of "*Chánguene*" and "*Changuinola*," derived from the Indian tribes which inhabited the region covered by the principal tributary on the right bank of the river, were subsequent to 1836. From all of which it appears that the *Culebras* River of the 1836 Decree is the very same *Culebras* of D'Anville and his imitators.

The fact that the name of Culebras fell into disuse immediately thereafter and was replaced by the appellations "*Chánguene*" and "*Changuinola*" (which at times alternated with the names of "*Tilorio*" and "*Tararia*" and even "*Dorados*"), facilitated the application of the forgotten name to that other river, situated to the westward, WHICH NEVER ONCE BEFORE 1836 HAD BEEN CALLED BY THE NAME OF "CULEBRAS, RIVER;" that is the *Sixaola*, or *Tarire* River, which until that year was generally designated by the name that fits it best and which fixes its identity with perfect precision—that of the "*Rio de los TALAMANCAS*."

It is, therefore, entirely proper to go back and see what was the status of things in 1836, so that the neo-Granadian decree for the occupation of the territory of Bocas del Toro may be confined within the limits that were then fixed for it.

With the *Culebras* River, as then understood, to wit, the *Changuinola* of the present day, or the *Estrella* of the earliest colonial period, the territorial aspirations of Colombia were satisfied, their primary object having been directed to legitimizing the occupation of the very rich region of Bocas del Toro; all else was held to be but secondary, according to the declarations made by that distinguished statesman, Señor Fernández Madrid.

In 1870 there was some jurisdictional conflict concerning possession of lands comprised between the *Sixaola* and the *Changuinola*. Costa Rica took a firm stand in defence of the *Punta Burica-Escudo de Veragua* line; and succeeded in putting aside the question as to possession in order to take up the entire question of dominion, through the medium of a definitive boundary treaty which was signed in 1873, and by which the divisional line was located considerably to the east of the

Culebras River of 1836 (the Changuinola of the present day).

In 1880 there were also some jurisdictional difficulties; but these were confined exclusively to the Pacific slope, the state of things upon the Atlantic side remaining as before. Between 1870 and 1880 Costa Rica exercised fully all of her rights of sovereignty over the lands embraced between the right bank of the Sixaola and the left bank of the Changuinola, as unimpeachable documents attest, more especially the geographical, topographical and geological report of the learned American, Professor William M. Gabb (Doc. No. 582) and his extensive ethnological investigation of the three tribes of Talamanca, presented to the Philosophical Society of Philadelphia (Doc. No. 583), and his report to the President of Costa Rica (Doc. No. 581), all of these documents showing in clear, precise and unquestionable terms the peaceable and effective possession by Costa Rica over the entire territory of Talamanca embraced between the two rivers mentioned, the sea and the Main Cordillera.

The Changuinola line accords with the historical antecedents of the present boundary question, since the latter grew out of the forcible occupation of Bocas del Toro in 1836, which canton received this river as a boundary under the name of *Culebras*; out of the neo-Granadian aspirations of 1835, which were satisfied with the Changuinola, so as to be able to legalize such occupation; and out of the jurisdictional conflicts of 1870 and 1871 over the little hamlet of Changuinola, solved by the Treaty of 1873 (Montúfar-Correoso) which located the boundary line at the Bananos River emptying into the Bay of Almirante, to the east of the Changuinola.

Nevertheless, the Changuinola (previously the Culebras) line did not result from the history of the treaties, for out of the five that were signed, four located it to the east of that river; but it may be presumed that there was a mutual consent with respect thereto, under the name of Doraces, when the Treaty of 1856 was signed (before the neo-Granadian Senate, in 1857, sought to push it further westward), if it be understood that Costa Rica was referring, as she did refer, to the *Changuinola* River—and still more definitely to the *Chánguene* River which is a tributary of the latter and the western frontier of the country of the Chánguene Indians.

While not the same, the Changuinola line came close enough to the jurisdictional *status quo* to also admit of the application of the names of "*Culebras*" and "*Doraces*," to that river—names inapplicable to the Sixaola.

The Changuinola line is a natural one; it is also the clearest and most convenient, inasmuch as it connects by a single course, in almost a straight line, the border point on the Atlantic with *Cerro Pando*, and it is supported by a cartographical tradition worthy of respect, in view of the fact that such frontier cannot be established by formal titles exhibited on behalf of Colombia, since she declares that she is not possessed of such titles but relies on considerations of another nature to supply the deficiency.

As a proof of the truth of this a brief summary will now be given of the maps which trace the *Estrella*, or *Culebras*, or *Changuinola* River—all one and the same—as the common boundary of the adjacent territories of Costa Rica and Colombia.

Among the documents which, according to the Award of September 11, 1900, the Arbitrator had before him in pre-

paring his decision, there were, it says, “* * * numerous geographical charts * * * sent to Us by the Representative of Colombia, specially accredited to Us for the present litigation;” these were geographical maps of which no copy was given to the Representative of Costa Rica, nor was any list of them prepared or delivered that could be used as a guide for their consultation elsewhere.

It must be presumed that in such a collection there were to be found the official maps of Colombia, the map known under the title of *Carta Corográfica del Estado de Panamá*, by Señores Ponce de León and Paz (Bogotá, 1864), and the Atlas of the Republic of Colombia, by Señores Codazzi, Paz and Pérez (Paris 1889). It must also be supposed that in the collection mentioned in the Award there were the maps cited by Don Pedro Fernández Madrid in his reports of 1852 and 1855, those referred to by Don Victoriano de D. Paredes, Chargé d’Affaires of New Granada in Washington, in his work entitled, *La cuestión de límites con Costa Rica* (published by him in the year 1855), those noted by General Correoso, Minister of Colombia in Costa Rica, in his “Memorandum” of 1873 (Doc. No. 335) and by Don Francisco de Paula Borda in his basic investigation of the same question (printed, but not published, in Bogotá between 1896 and 1898).

Inasmuch as Colombia cited the maps referred to in support of her case—stating in various passages in the writings published in defense of its claims that those maps fully showed the justice of those claims—an effort has been made to examine them with some care and from such investigation the following results have been obtained;

1. It has been demonstrated that the *Culebras* is the first river that flows and empties into the Atlantic Ocean

at the left and a short distance from the Bay of Almirante; this cannot be confused with the *Rio de los Talamancas*, which is sometimes called the *Bananos* River, but has been known latterly under the names of the *Sixaola*, *Telirc*, or *Tarirc* River, which, in most of the maps invoked by Colombia, occupies the third place to the west of the Bay of Almirante.

The *Culebras* River is set down in the above location in the following maps, which have been found among those cited by Columbia:

(a) *Tomás López and Juan de la Cruz* (Map IX). Immediately to the northwest of the Bay of Almirante, this map traces two insignificant streams without names, and then one of a much greater size, to which is given the name of "CULEBRAS." Then it shows the *Bocaces* River and, lastly, the *Rio de los Talamancas*. Between the *Bocaces* and the *Talamancas* River appears the name of "Carthago." This map does not mark a divisional line; but it clearly shows the difference existing between the first and the third river cited; that is to say, between the *Culebras* and the *Talamancas*. The latter being evidently the *Sixaola*, the "*Culebras*" must be the *Changuinola*.

(b) *Thomas Jefferys* (Map XIV). The *Culebras* River, according to this author, disembogues to the west of *Punta Chica* or "Monkey Point" (*Punta Tervi*), a short distance from the Bay of Almirante. It corresponds as to situation with the *Changuinola* River of the present day. After the *Culebras* there appear, toward the northwest, the *Quemados*, *Doraces*, *de Dios* and *Bananos* Rivers. This map does not mark any frontier.

(c) *Juan López* (Map XI). The *Culebras* River occupies the first place immediately to the west of the Bay of Almirante; then come the *Quemados* and the *Doraces*. Consequently, the *Culebras* of Juan López is the *Changuinola*.

(d) *Robert de Vaugondy* (Map XII). The *Culcbras* is situated as in the previous one, a long way to the south of the *Rio de los Talamancas* (Sixaola).

(e) *Barnett* (Map XXV). On this map the name of *Changuene* (*Changuinola*) is applied to the river situated immediately to the west of the Bocas del Drago; that is to say, the same river designated by the name of "*Culebras*", in the preceding maps.

2. While, however, some of the maps mentioned by Colombia carry the boundary line between Costa Rica and Veragua to a considerable distance from the Bay of Almirante, nevertheless with the exception of two, those maps had a biased origin, that is to say, a neo-Granadian or Colombian origin, and were subsequent not only to 1836, the date of the neo-Granadian occupation of the territory of Bocas del Toro, but subsequent moreover to the date of the first opinion by Señor Fernández Madrid. Such are the charts of the State of Panama by Señor Codazzi, 1854; of the same state by Señores Ponce de León and Paz, 1864; and those embraced in the Atlas of Colombia, 1889. Those maps, strictly speaking, have no authority and should be dismissed from the discussion so far as they favor the interests of the party who prepared or directed their preparation as was found to be convenient.

This conclusion is all the more certain, if the maps of neo-Granadian origin prior to those dates are examined, such as those of Señores Acosta (Map XXVIII) and Restrepo (Map XXII). The former is silent in respect to the frontier line, while the second shows the line as starting immediately to the west of the Bay of Boca Toro, or from a point located on the right of the outlet of the Changuinola River.

3. The division line appears on the maps examined to be traced in the following manner.

On the Vaugondy map it was the *Culebras* which served as the frontier.

On that of Juan López the frontier runs from *Punta Careta* to *Punta Burica*.

On the Kitchin map (Map XIII) it runs from the River *Culebras* (*Changuinola*) to the Cape of Boruca.

On the *Carta Esférica del Mar de las Antillas y de la Tierra Firme* (Spherical Chart of the Sea of the Antilles and the Main Land [Map XVII]) it starts from *Punta Careta* and ends at *Punta Burica*.

On the map by H. Brué, 1825 (Map XX), it starts from an unnamed point to the west of *Boca del Drago* and terminates at *Punta Burica*.

On the map of Arrowsmith, 1826 (Map XXI), it begins in the estuary of Chiriquí and runs to a point to the east of *Punta Burica*.

On Restrepo map, 1827 (Map XXII), it starts from *Boca del Drago* and proceeds to the Gulf of Dulce.

On another map by Arrowsmith, 1832 (Map XXIII), it commences at the *Dorados* River and terminates at *Punta Burica*.

On the Wyld map, 1852 (Map XXX), it starts at the *Chiriquí* River and ends at *Punta Burica*.

Summing up the foregoing, it will be noted that out of the maps invoked by Colombia in support of her course only ten mark the frontier now under discussion. These latter locate it as follows: two in the *Culebras* or the *Changuinola* (really the same) river; one in the *Dorados* River, and one in the *Chiriquí* River; two at *Punta Careta*; one in the Lagoon of *Chiriquí*, and two at the *Boca del*

Drago, or its immediate vicinity. Therefore, there are four maps which carry the frontier either to the Changuinola (or Culebras or Dorados), or to Punta Careta; whereas all the rest locate it at the Boca del Drago, or close by, and at the Chiriquí Lagoon and Chiriquí River. A result much more unfavorable to Colombia would be obtained if, instead of merely the maps invoked by her, a complete and independent collection of maps should be taken for examination.

The following Colombian authorities resolutely defend the *Culebras* River as the boundary:

The ex-President Don Tomás C. Mosquera, the Senator Don Pedro Fernández Madrid, Dr. Don Felipe Pérez, Don Jerónimo García, Don Victoriano de D. Paredes, Diplomatic Agent of New Granada in Washington, Senator and Minister of State, and many others; none of them, with the exception of the first named, fixes the location of the river Culebras. Señor Mosquera gives it by saying that its outlet is $81^{\circ} 31'$ west of Greenwich, which is equivalent to full *recognition of the territorial rights of Costa Rica, for that is the location of the Chiriquí or Calobébora River.*

The Culebras River is also asserted to be the boundary by the distinguished Colombian, the translator and editor of Elisée Reclus' "Geography of Colombia," Señor Vergara y Velasco, who declares that river to be the *Changuinola* of the present day.

General Mosquera, President of New Granada, and, later, of the United States of Colombia, a great general of the Colombian Union and its Minister Plenipotentiary in London, published in 1866 a work entitled, "*Compendio de Geografía General, Política, Física y Especial de los Estados Unidos de Colombia* (Compendium of Geography, Gen-

eral, Political, Physical and Special, of the United States of Colombia), in which the following passages occur:

“*Modern Boundaries.*—The general boundaries of the Colombian Union are: on the north the Atlantic Ocean, from the mouth of the Paijana to the mouth of the RIVER CULEBRAS; TO THE NORTHWEST THE REPUBLIC OF COSTA RICA, FROM THE MOUTH OF THE CULEBRAS RIVER TO THAT OF THE GOLFITO RIVER IN DULCE GULF; to the west, the Pacific Ocean, from the Golfito River to the Mataje ravine * * *.”

“The particular boundaries are as follows: with COSTA RICA, THE BOUNDARY LINE WITH THIS REPUBLIC STARTS IN THE ATLANTIC AT THE EAST OF PUNTA CARRETA, AT THE OUTLET OF THE CULEBRAS RIVER; IT THEN FOLLOWS THIS LATTER RIVER TO ITS SOURCE, WHICH IS IN THE MAIN CORDILLERA, IN A SOUTH DIRECTION. It then seeks the line of the summits of a branch that runs toward the Gulf of Dulce (also almost in a SOUTH DIRECTION), which range they call the “*Cordillera de las Cruces*,” and at the middle of which the path or trail crosses that leads from the village of Bugaba to the native settlement of Boruca.

“From Las Cruces beyond Golfito to Punta Burica in the Pacific, by an uneven country which is found there, full of little hills and hammocks, ramifying in different directions and all covered with dense thickets, until the range of hills is reached which forms the said point.”

The Changuinola line, if not absolutely just to Costa Rica—because not founded upon the principle of the colonial *uti possidetis*, or on immemorial possession, without interruption or protest, as required by international law—is relatively just, if others nearer to the Escudo de Veragua are excluded and as compared with that of the Sixaola.

This Changuinola line, therefore, combines all the characteristics the divisional line should have, and besides, it may be said in its behalf that it is an equitable line.

When Costa Rica, confronted by the Award of President Loubet, notwithstanding the mistakes with which it was permeated, is placed in a position requiring her to desist from her claim to the immense territory she legitimately held as far as the line of the Escudo de Veragua, it is at least equitable that she be conceded the Changuinola line, in view of the fact of her right to the whole of the territory, the fact that the treaties placed the boundary farther to the east than that, and of the other circumstances mentioned herein elsewhere.

However explicit the Award of President Loubet may be, and however rigorous is the obligation which it entails, still more binding and decisive are the legal precepts, and yet they are tempered by equity when there are doubts or there is actual injustice in their practical application. The Law Digest, in title 17 of book 50, above cited, says: "In doubtful cases that which most nearly conforms to equity is to be preferred (*Semper in dubiis benigniora praeferenda sunt.* No. 56)." "In all things, and especially in law, equity is to be done (*In omnibus quidem, maxime tamen in jure aequitas spectanda est.* No. 90)."

(4) THE SIXAOLA-YORQUÍN LINE AS THE MAXIMUM
ASPIRATION OF COLOMBIA AND ITS CONFORMITY
WITH THE STATUS QUO.

The *Sixacla-Yorquín* line does not go beyond the territory disputed, and differs in this respect from the *Sixaola-Tarire* line, which does go outside of that line to a considerable distance.

It cannot be based on the colonial *uti possidetis*, except under the erroneous presumption that the Culebras River, claimed by Colombia under the name of "Culebras" or "Calobébora" and spoken of in the Spanish documents, is the Sixaola.

It does not accord with other historical antecedents, save the maximum claim of Colombia for reaching out to that line by successive acts of invasion and her declarations that the Sixaola is the Culebras, or Doraces River.

It is not supported by any of the treaties that were made, for all of them put the boundary to the east of the Changuinola—except the Treaty of 1856, which fixed it at the Doraces—and under the "explanation" of the neo-Granadian Congress, the latter was the Sixaola, which explanation Costa Rica did not accept.

It agrees exactly with the *status quo* established in 1880 and confirmed in 1891, wherein by the Culebras, or Doraces, referred to therein, respectively, the *Sixaola-Yorquín* was understood by this boundary, and the possessory and jurisdictional situation was preserved when the Loubet decision was rendered, and it is so preserved to-day.

The Sixaola-Yorquín line, as it has been explained, is a clear and natural line, "without any charge or special servitude."

Thus considered it is a convenient one, but it can have no other legal value than that of a *status quo* dating from 1880, being provisional in character and without prejudice to the rights of either party.

President Loubet, however, ought to have taken the agreement of the parties in respect to their possessory and jurisdictional situation as a surer guide for the decision of the question; but believing, as has been stated, that the Culebras and Doraces were one and the same river, that the latter was

the Sixaola and that the Sixaola was the Tarire, throughout its entire length, he thought that he was confirming the possessory and jurisdictional situation when he traced the frontier line by "the Tarire or Sixaola," as he stated, although he ran it along the spur which he supposed was backed against the river, the consequence being that the frontier was marked by a mountain range (spur) notwithstanding the fact that no one had claimed or asked for that supposititious spur.

The basic mistake made by President Loubet consisted in taking the *Tarire* to be equivalent to the *Sixaola* River. Indeed, not even Colombia herself ever maintained that it was equivalent except in its lower portion.

But it cannot be believed that President Loubet ever thought or desired to take away from Costa Rica the territory embraced within the two lines of the supposititious spur and the Main Cordillera, which constitute what the Costa Ricans call the "*Dagger of the Award*," traced upon the modern maps that accord with the real course of the *Tarire*, from west to east, and indicate its first sources as formed in the apex of the angle of those two lines.

To understand the intent of President Loubet one must look at the same map that he did, and that could have been none other than the map of Ponce de León and Paz of 1864, because of the coincidences pointed out and other facts resulting from the Colombian antecedents in the historical development of the boundary question.

Now, then, on that map the *Sigsola* River appears under that name alone, and as a single straight line running from north to south, but rather inclined to the right at its sources. These are characteristics that correspond to the Sixaola-Yorquín line and are supplemented by those that

very nearly connect the supposed spur running from Punta Mona along the range of Las Cruces, without more than barely touching the Main Cordillera; that is to say, there is no appearance of that penetrating angle which results when it is sought to interpret the idea of President Loubet on the modern maps, where the Tarire River is traced as such with the true east to west course.

It may be supposed, then, that President Loubet, thinking that such was the direction of the Sixaola, may have believed that this river responded to the possessory and jurisdictional situation and was suitable for a frontier. Consequently it follows that the purpose of President Loubet was erroneously interpreted when it was translated by the *Sixaola-Tarire* line, in the light of the present maps, instead of being represented by the *Sixaola-Yorquín* line, to which he undoubtedly referred under the inspiration of the official maps of Colombia—mainly that of 1864.

(5) THE DIVISIONAL POINT IN THE ATLANTIC.

The foregoing defense of the line of the Sixaola River from its outlet is also a defense of that outlet as the extreme divisional point in the Atlantic. The characteristics pertaining to this line as a whole pertain equally to its extreme point, although just because it is only a point in the line, they are presented with greater clearness as to the facts and are better defined in the discussion of the boundary controversy as a whole.

The aspirations of Colombia, save as to the Mosquito Coast, never went beyond the right bank of the Sixaola, to which, it may be, she sometimes gave the name of "Culebras," or "Doraces." The outlets of the rivers were the points agreed on in all the treaties as the divisional points

on the Atlantic: the mouth of the Culebras or Chiriquí in the Treaty of 1825; that of the Doraces, in the Treaty of 1856 (Calvo-Herrán); that of the Cañaveral, in the 1865 (Castro-Valenzuela) treaty; and that of the Bananos River, in the treaty of 1873 (Montúfar-Correoso).

The Conclusions of the Senate of Plenipotentiaries of Colombia, of 1880, in virtue of which instructions were given to the representative of that republic to sign the arbitral convention of that year, fixed as the extreme point in the Atlantic, the mouth of the CULEBRAS River, from which the line of the interior frontier must start as a *maximum claim*.

The outlet of the *Sixaola* is the extreme point of the possessory and jurisdictional *status quo* established in 1880 (according to the note of Señor Rico of April 20) under the name of *Culebras* River, and, as appears by the note of Señor Suárez of March 16, confirmed in 1891, under the name of the *Doraces* River.

The outlet of the *Sixaola* constitutes a perfectly clear and natural extreme divisional point, "without any charge or special servitude."

This point is, therefore, the most just and convenient one, if the outlet of the Chiriquí, Cañaveral, or the Bananos is not accepted, as provided in the treaties referred to; or if the mouth of the Tilorio or Changuinola is not accepted as asked for by Costa Rica in the first instance.

Punta Mona, on the contrary, lacks all the conditions it should possess in order to constitute the extremity of a divisional line, according to the intent of the Award.

Punta Mona is clearly located quite outside the territory in dispute. It does not appear in any act of possession or jurisdiction on the part of Colombia; nor did Colombia ever claim it as a maximum limit; nor did she ever men-

tion it in the suit; neither was it ever spoken of in the treaties, or in the diplomatic controversies.

The fact that the name of *Punta Mona* appears in the Award can not be urged as a valid reason against suppressing it in a correct interpretation of the true intent with which that decision was pronounced. Without undertaking to repeat what has been already stated concerning the meaning of this expression, or to recall the authority given by the same Arbitrator to correct his possible errors, it is sufficient for the present to consider the explanation of these errors already submitted and the contradiction resulting between the letter of the Award—read in the light of the geographical facts—and the purpose by which it was inspired.

Even adhering to the letter of the decision, it is clearly to be seen that President Loubet did not speak of *Punta Mona* as the extremity of the frontier by reason of its character as such and the special conditions surrounding it, but he did refer to "the *contrefort* of the *Cordillera* which starts from *Punta Mona* * * * and closes the valley," etc. So that he did not think of *Punta Mona* as being *Punta Mona*, except for the spur by which, he believed, it was connected with the chain of division of the waters flowing to the Atlantic and the Pacific.

It being demonstrated that no such spur exists and that *Punta Mona* is lacking in the geographical conditions requisite to make it a natural and well defined line—such as the outlet of a river possesses in that respect—there should be no hesitation in rejecting *Punta Mona* as the divisional point. The mouth of the Sixaola would be justified by the reasons stated, and its close proximity to *Punta Mona* brings it within the intention of even President Loubet himself.

In any event it is absolutely necessary to carry the line east of the Tarire, otherwise the people of Costa Rica, who are established on both sides of the Tarire, would be entitled to claim a right of passage, thus constituting burdensome easements which would occasion continual conflicts; and, further, there would be a failure to comply with the stipulation in the first Article of the Arbitral Convention of 1880, according to which the frontier must separate the respective territories of the two republics in such manner that each shall be left in the full, quiet and peaceful dominion of its own, "without any charge or special servitude" in favor of the other.

It follows from the situation and conditions above shown that Costa Rica has a valid title to all the territory under consideration to the west of the Changuinola River, which title should be sustained not only on the principle of *uti possidetis* in 1821, but also on the ground of undisturbed and unchallenged possession from time immemorial up to 1821, when that principle was adopted in recognition of such possession, and also the uninterrupted continuance of such possession since 1821 down to the present time, there never having been any adverse holding of any part of the above mentioned territory, until a very few years before arbitration was agreed upon under the treaty of 1880, since which time, and pending arbitration, the occupation of a portion of that territory must be regarded as without prejudice to the rights of Costa Rica, which had already been established.

In other words, Costa Rica expressly invokes the right of prescription as well as the principle of *uti possidetis* in 1821 in sustaining its title to this territory.

DECISION REQUESTED.

For the reasons set forth in this Argument and in consideration of the powers conferred upon the Arbitrator,

The Honorable the Chief Justice of the United States is asked to decide the present arbitration by declaring that the frontier line between the Republics of Costa Rica and Panama shall be the following:

A LINE WHICH, STARTING AT THE OUTLET OF THE TILORIO, OR CHANGUINOLA RIVER ON THE ATLANTIC, FOLLOWS THE CHANNEL OF THAT RIVER, UP STREAM, TO THAT ONE OF ITS HEADWATERS WHICH IS THE NEAREST TO CERRO PANDO; THENCE PROCEEDING BY THE SHORTEST LINE TO THE MAIN CORDILLERA, AND ALONG THE SUMMITS OF SAID CORDILLERA TO THE POINT NEAR THE NINTH DEGREE OF NORTH LATITUDE IN THE PROXIMITY OF CERRO PANDO, WHICH IS THE POINT MENTIONED IN ARTICLE I OF THE TREATY OF MARCH 17, 1910, AS THE END OF THAT PART OF THE BOUNDARY LINE ON THE PACIFIC SIDE UPON WHICH THE PARTIES ARE IN AGREEMENT.

If, however, the Honorable the Chief Justice does not adopt the line above asked for substantially as described, as the most just and equitable boundary after taking into account all the facts, circumstances and considerations

which have a bearing upon the case, then in the alternative Costa Rica requests that he will adopt as the boundary a line substantially as follows:

A LINE WHICH, STARTING AT THE OUTLET OF THE SIXAOLA RIVER IN THE ATLANTIC, FOLLOWS THE CHANNEL OF THAT RIVER, UP STREAM, UNTIL IT REACHES THE YORQUIN, OR ZHORQUIN RIVER (ALSO CALLED THE SIXAOLA, CULEBRAS AND DORADOS); THENCE ALONG THE CHANNEL OF THE YORQUIN RIVER TO THAT ONE OF ITS HEADWATERS WHICH IS THE NEAREST TO THE DIVIDE BETWEEN THE WATERS OF THE SAID YORQUIN, OR ZHORQUIN RIVER, ON THE NORTH, AND THE TILORIO, OR CHANGUINOLA RIVER, ON THE SOUTH; THENCE PROCEEDING BY THE SHORTEST LINE TO SAID DIVIDE AND CONTINUING ALONG THE SUMMIT OF THE SAME, IN A WESTERLY DIRECTION AND THEN SOUTHWESTERLY ALONG THE DIVIDE BETWEEN THE WATERS OF THE UREN AND OTHER RIVERS TRIBUTARY TO THE TARIRE ON THE NORTH AND THE WATERS TRIBUTARY TO THE TILORIO, OR CHANGUINOLA RIVER ON THE SOUTH, FOLLOWING THE SUMMIT OF THAT DIVIDE TO THE MAIN CORDILLERA AND ALONG THE SAME TO THE POINT NEAR THE NINTH DEGREE OF NORTH LATITUDE IN THE PROXIMITY OF CERRO PANDO,

WHICH IS THE POINT MENTIONED IN ARTICLE I OF THE TREATY OF MARCH 17, 1910, AS THE END OF THAT PART OF THE BOUNDARY LINE ON THE PACIFIC SIDE UPON WHICH THE PARTIES ARE IN AGREEMENT.

These, then, are the principal and secondary frontier lines which on behalf of Costa Rica the Honorable Arbitrator is asked to adopt in the award which is to bring this litigation to an end.

Respectfully submitted,

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Representative of Costa Rica.

CHANDLER P. ANDERSON,
Counsel for Costa Rica.

Washington, D. C.,
November 18, 1913.

APPENDIX.

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INTRODUCTION.

In various parts of the preceding Argument appears the statement of Costa Rica's centuries-long possession in the Talamanca territory known originally as the Province of *Hara*, and that possession has remained intact throughout a considerable part of the territory down to the present day.

Costa Rica, then, finding herself, as she does, in actual, effective, unopposed and quiet possession in that part of the Talamanca region, it is unnecessary, in strict legal observance, to show the antiquity of possession in view of the principle of law that relieves the actual possessor

from the obligation of proving prior possession; but out of abundant precaution Costa Rica exhibits the proofs establishing the fact that the possession she now enjoys is as old as her possession of the ancient capital of the province—Cartago—and of her present-day capital in the City of San José.

Costa Rica's first discoverer, conqueror and pacificator, the Licentiate Juan Cavallón, was the one who, in the person and name of the Crown of Castile, took possession of the sites of the cities named and, through the medium of his associate and lieutenant, Juan Estrada Rávago, also took possession of the numerous native villages that made up the Province of HARA, later called TALAMANCA.

I. FROM 1560 TO 1610.

(I) FOUNDING OF THE CITY OF CASTILLO DE AUSTRIA. CÉDULAS OF APPROVAL BY PHILIP II.

On the 21st of November, 1560, the Licentiate Juan de Estrada Rávago and the *Cabildo* (municipal council) of the City of Castillo de Austria, which had just been founded upon the Bay of San Jerónimo (also called *Almirante*, or Bay of the Admiral), wrote to the King, Philip II, advising him of its establishment and bespeaking the royal favor. The Monarch replied to both letters on the 4th of August of the year following; and in the response he approved in explicit and even enthusiastic terms the colonization enterprise that had been begun, encouraging those interested to carry it forward and promising them in due season the reward that their services merited. Following is an extract from one of the Royal letters (Docs. Nos. 45, 46):

"I have seen your letter of XXI November of the year (1560) last past, in which you made a report of the settlement which you had made of the town (the town of Castillo de Austria) AT THE PORT OF SAN JERÓNIMO, WHICH IS IN THE PROVINCE OF CARTAGO * * * and I have had much satisfaction with the exploration and settlement so far made * * * and therefore I thank you and acknowledge as service the hardships that you have suffered and the good order, which, it appears, you have preserved in everything; and I charge you that you shall continue that which you have begun; that you shall so provide that this settlement shall be improved and that from it the neighboring regions shall be explored; that the Indians thereof shall be well treated * * *."

In the other letter the King speaks as follows:

"I have seen your letter of XXI November of the past year, 1560, dated at Castillo de Austria, WHICH IS IN THE PROVINCE OF CARTAGO AND COSTA RICA, and by it, and by the account sent to us, and by what the town wrote to us, we understand that you labored in the exploration and settlement thereof * * *. There is great satisfaction with what you have done, as, according to your account, I deem it to be very successful and I thank you and keep in mind the work that you have done. I hope through Our Lord that * * * the land will be explored and that we may know the secrets of it * * *. Therefore, I charge you that you continue what you have begun, and you shall so provide that settlement shall go forward * * *."

On the same day, August 4, 1561 (Doc. No. 47), the King wrote to the Licentiate Juan Cavallón, as follows:

"* * * you arranged that the said Juan de Estrada Rávago should go by sea and you by land, and so it was that the said Juan de Estrada, with

sixty men departed and disembarked at the PORT OF SAN JERÓNIMO, WHICH IS IN THE PROVINCE OF CARTAGO AND COSTA RICA * * *. I have been pleased to learn what has been done in this exploration and settlement * * *."

(2) POWERS OF THE PRIEST ESTRADA RÁVAGO.

The Royal approval of the founding of the town of Castillo de Austria on the Bay and Port of *San Jerónimo*, in the Province of Cartago and Costa Rica, the exploration and colonization of which was entrusted to the Licentiate Juan Cavallón, could not have been more clear and explicit; and in its execution, which he undertook, the Priest Estrada kept and respected the directions given in his commission, as appears by the legal authority delivered to him by his immediate superior in the pursuance of his mission, the essential portion of which reads as follows (Doc. No. 41):

"I, the Licentiate Juan de Cavallón, His Majesty's Judge of the Royal Audiencia of the island of Española and his Chief Justice in the Province of Cartago, Veragua and Costa Rica;

"Whereas, being informed that it was desirable His Majesty and his Royal Audiencia of the Confines, committed to me the settlement of the said Province of CARTAGO AND COSTA RICA, which is all the territory that is left in the Province of Veragua, from sea to sea, inclusive, and which begins from where ends the square of twenty-five leagues that His Majesty granted to the Admiral Don Luis Columbus, toward the west, they beginning from the Belén River, inclusive, counting by a parallel toward the western side of the Bay of ÇOROBARÓ * * * ; in such a manner that from where the said square of twenty-five leagues ends, measured in the manner stated there, begins the said Province of Cartago and it terminates as the Rio Grande, toward the west,

*on the other side of Cape Camarón * * * and for the execution of the aforesaid, and that it may have its due effect * * * it is desirable that there should be a person who may go with my power and authority to establish a city or town by the sea at the Port of San Gerónimo, with the people who at the present time are gathered and ready in the frigates which are in the Lake of Granada, by the Desaguadero * * *.*

*"Furthermore, you are to land at the Port of San Gerónimo, and as soon as you disembark you will arrange for the selection of a site and place on which to settle near the sea, taking care that it may be a healthful place and fertile * * *; and the place that you shall thus settle you shall call and entitle Castillo de Austria * * *."*

(3) POWERS OF THE LICENTIAE CAVALLÓN.

Nor did the Licentiate Cavallón exceed his prerogatives or powers, for by the *cédula* of 1561 (Doc. No. 42), which directed the transfer to him of the charge that had previously been granted to the Licentiate Ortiz de Elgueta, there was assigned to the discovery and conquest of the *Province of Cartago and Costa Rica* the same extended area which had been designated for the "certain territory" spoken of in the *cédula* granting the Commission to the Licentiate Ortiz and dated February 23, 1560 (Doc. No. 37); this territory was embraced within the following district: "** * * the Province of Nicaragua * * * on the side of the cities of Nombre de Dios and Panama, between the South Sea and that of the North * * *.*"

It is evident that the Bay and Port of San Jerónimo were included within the boundaries stated; and although the Dukedom of Veragua might seem to have been also included therein, the said dukedom was left quite un-

touched, it having been at that very time the subject of a "pacification" at the hands of Francisco Vázquez, acting under the instructions of the Crown which had been transmitted to the Licentiate Monjaraz, the Governor of Tierra Firme, and the execution of which was confided by the latter to the said Francisco Vázquez.

(4) JUAN VÁZQUEZ DE CORONADO, SUCCESSOR TO
CAVALLÓN.

The successor of the Licentiate Cavallón, Juan Vázquez de Coronado, in the capacity of Chief Justice and Captain-General of the Provinces of New Cartago and Costa Rica, on behalf of His Majesty and with the solemnities prescribed by the laws, took formal possession of the Valley of Coaza, within the jurisdiction of the said Province of CARTAGO AND COSTA RICA, and received personally the caciques, or chiefs, of the settlements called Yaranaba, Duiba and Duy, who became vassals of His Majesty the King of Spain. This appears by a notarial document executed before the notary, Cristóbal de Madrigal, in the village of *Hara* therein mentioned, on the 24th day of January, 1564 (Doc. No. 51); and on the 6th of March (Doc. No. 51), following, in the village and *palenque* of Quequexque, Province of Duy, Vázquez de Coronado likewise took possession, before the same notary, of the villages of Quequexque and Taranca, located in the neighborhood and within the region of the Islands of ZOROBARÓ. These villages of Hara, Quequexque and Taranca formed a part of the district assigned to Juan Vázquez de Coronado in consideration of his explorations and settlements, as may be seen by an examination of the Commission he received from the Audiencia of Guatemala for that purpose, which was the same that had been given to the

predecessor of Vázquez de Coronado, the Licentiate Cavallón, and to the one who preceded the latter, the Licentiate Ortiz de Elgueta.

These acts of taking possession were preceded and followed by many others of a like character, to-wit:

That of the village of *Ua*, received from the Cacique Quiribu, dated February 1; that of *Chichimecas*, received from the Cacique Yztolín, a Mexican, on February 5; that of the village of *Cabeaca*, received from the Cacique Quexeburu on the 1st day of January; that of the village and *palenque* of *Cutcurú*, between Texbi and Quequexque, Province of Duy, on February 17, received from the Cacique Ururava; that of the village of *Bitagara*, in the district of Ururaba, received from the Caciques Cengarao and Arcara, on February 17; that of the villages of *Corcorú* and *Buquicara* and *Zarabarú*, received from the Caciques Cengarao and Quiquingaba, February 17; that of the village of *Cutcurú*, received from its Cacique named Ciquinibi on February 17; that of the village of *Tervi*, or *Texbi*, received from the Cacique called Quiquincua, with ten headmen and sixty Indians, on February 20; that of the village of *Abebare*, Province of Coaza, received from the Cacique Ucuburú, on March 22; that of *Cintara*, Province of Coaza, received from the Cacique Orobaca on March 22; that of the village of *Botbe*, Province of Coaza, received from the Cacique Mesabarú on March 22; that of the village of *Orizco*, received from the Cacique Cirururú, on the same day, March 22; that of the village of *Tequemía*, received from the Cacique Ayeaye on March 22; that of the village of *Cabeaca* on March 24; that of the villages of *Mesabarú*, *Ucuburú*, *Duaquita*, *Ayeaye* and the other villages in that region, of which possession was taken at the village of *Ciruro*, Province of Coaza, on the

bank of the Flazquita River on March 24; and that of the village of *Minón* and many others of the Province of Tariaca and the rest as far as the city of Cartago, the enumeration of which would serve no purpose here.

The examination of all these documents¹ shows that Vázquez de Coronado went from one extremity to the other, and in all directions, over the province that subsequently received the name of *Talamanca*, then known under the name of *Hara*, which extended from the Tarire River to the Bay of Zorobará, inclusive, and from the sea to the divide between the watersheds of the two oceans. That region, like all the rest traversed by Vázquez de Coronado, was left thoroughly explored and mastered by that conqueror, as humane and generous as he was untiring.

(5) PERAFÁN DE RIVERA, SUCCESSOR TO CORONADO.

Some years later the successor of Vázquez de Coronado, Perafán de Rivera, carried out a bold exploration in a direction the reverse of that made by Coronado, entering on the Atlantic slope and coming out on the slope of the Pacific. His interesting letter to the King, Philip II, dated at the city of Nombre de Jesús on July 28, 1571 (Doc. No. 58), sketched the story of that bold expedition. From this it appears that Perafán, together with the nobility and chivalry of the city of Cartago, including the Royal officials, and accompanied by his wife and sons, as well as religious persons for the preaching of the Gospel, made an entry into the hostile country, in compliance with the Royal *provisiones* and instructions, to found a new settle-

¹León Fernández, *Documentos para la Historia de Costa Rica*, Vol. IV, pp. 293-317.

ment or that from which he wrote; and after a weary year and a half among those mountains and enemies, struggling with all sorts of difficulties and privations, and even insubordination among his own followers (some of whom Perafán was compelled to severely punish, which was perhaps only pardonable under the peculiar circumstances which surrounded him) he traversed a hundred leagues along the North Sea over a rugged and broken country in the mountain region until he reached the limit of the Government of Costa Rica, *toward the Dukedom of Veragua*; he crossed the Cordillera and passed along the slopes of the South Sea for almost another hundred leagues, *as far as the boundaries of his government, toward Natá*, and finally founded in the Province of Coto the city that he called "Nombre de Jesús," with two ports, one of which he called "Coronado" and the other, "Golfo Dossa" (Gulf of Osa or Dulce Gulf), each distant ten leagues from the city. On the shore of the North Sea, according to the description given by Rivera, the province had two recognized ports; San Juan and San Jerónimo. With regard to the discovery of mines, they were numerous in the vicinity of the city of Nombre de Jesús and on the *Rto de la Estrella* (Changuinola or Tilorio).

(6) PROCESS OF ARARIBA.

As appears by the important legal document known as the "Process of Arariba," begun in the year 1570 by order of the Governor and Captain-General Perafán de Rivera¹ (in which the proceedings resulted in the condemnation to death and the execution of the soldier Vicente del Castillo), most of the persons who accom-

¹León Fernández, *Documentos para la Historia de Costa Rica*, Vol. III, p. 3.

panied the governor had been especially induced to go for participation in the colonization of the Estrella River, above mentioned, a location which embraced within the limits of the Government of Costa Rica, had strongly attracted the attention of the discoverer, Juan Vázquez de Coronado, and numerous followers, on account of the abundance of gold that had been taken from its waters. But Perafán, tired of the struggle he had carried on against the natural difficulties of the northern watershed and seeking the riches that he supposed were easier to secure on the slope leading down to the other sea, was unwilling to found the new settlement referred to in the zone at the north; he gave his preference to that of the south which, from the previous experience of Coronado, he knew to be milder, well populated with natives and abounding in savannas suitable for the pasturage of cattle. This was the origin of the plot to desert from the camp, for which the unfortunate Castillo was held responsible.

(7) FOUNDING OF THE CITY OF NOMBRE DE JESÚS.

Governor Rivera laid out the site of the city of Nombre de Jesús and its district toward the city of Cartago as far as Quepo and the territory thereof, and expressly included therein Pococi, Aoyaque, Tariaca, Moyagua, Morore, Cirore, Mohoruboru and Cabeaca, *all the Province of Hara (Talamanca)*, Cicues, Teribí, Quequexque, Cuxerinducagua, Arariba, Zeburín, Baxca, Bioro, and all the province then discovered, and the territory along the shore of the South Sea, toward Natá, as far as the limits reached by the district of the city, within which were comprised Cobto and Boruca, Cía, Uriaba, Xarixaba, Yabo, Duarca, Tarima, Tabiquiri, Cabra and its terri-

tory, Bericala, Orexuxa, and many other villages explored and to be explored, all of which he proclaimed and designated as districts and within the jurisdiction of said city of Nombre de Jesús. This founding document was verified with all the usual formalities, before Francisco Muñoz, notary of the Government, in the village of Cobto, on the 6th day of March, 1571.¹

This paper supplies a perfect demonstration of the exercise of jurisdiction by the Governor of Costa Rica, Perafán de Rivera, over the shores of the Bay of Almirante on the North Sea, and as far as the limits of Natá, on the South Sea, where many villages embraced within the district of the city of Nombre de Jesús were located.

(8) FOUNDING OF THE CITY OF ARTIEDA.

A new act of formal and solemn possession of the territories designated as an integral part of Costa Rica took place in 1577, on the 8th of December (Doc. No. 67), the day on which Diego de Artieda Chirinos, Governor and Captain-General of the Province of Costa Rica, founded the city called *Artieda del Nuevo Reino de Navarra* (Artieda of the New Kingdom of Navarre), two and half leagues up-stream from the mouth of a river discovered by that same captain at the mouths of the *Drago* and Bay of *Almirante*, in the mainland, to which river he gave the name of *Nuestra Señora de la O del Valle del Guaymí*, "PROVINCE OF COSTA RICA"; of this city, river and valley he took possession in the usual form, a notarial certificate having been prepared and executed before the notary, Juan González Delgado.

Artieda sent soldiers from his garrison up-stream for the exploration of that country, and at a distance of nine

¹Fernández, *Documentos*, Vol. V, p. 36.

leagues, more or less, the chief of the expedition, Captain Francisco Pavón, found a valley settled by numerous natives and well under cultivation in *pejibais*¹ and maize on both banks of the river. He took possession thereof in due legal form and gave to the place the name of the "Valley of the Pejibais and of Valderroncal," of the Province of Costa Rica, before the notary appointed, Andrés Villegas, on March 5, 1578 (Doc. No. 68).

(9) FULL APPROVAL OF THE SETTLEMENTS MENTIONED.

All of the foregoing acts by which possession was taken (those by Juan de Estrada Rávago and by Juan Vázquez de Coronado, as well as those by Perafán de Ribera and Diego de Artieda) were duly brought to the knowledge of the Audiencia of Guatemala and the government of the mother country, and they were fully approved, as appears by numerous documents, some of which have already been cited. Thus it was that the King wrote to Artieda on June 3, 1580 (Doc. No. 69), in response to the letter from the latter, dated March 28 of the previous year, expressing his Royal satisfaction at the fortunate outcome of his voyage, although the difficulties encountered by Artieda had delayed the execution of the matters he had in charge; and being then free from those troubles and knowing how important were the pacification and settlement of the Province of Costa Rica, the King charged him to proceed with the utmost diligence and industry, and assured him that his services would be remembered and rewarded. The King also addressed a letter on the same date to the Audiencia of Guatemala (Doc. No. 69), stating that he had been fully informed

¹*Guilielma utilis.*

of the entry made by Captain Artieda into his Government of Costa Rica and of certain settlements made by him at Bocas del Drago; and the action on the part of Artieda was in no wise criticized, inasmuch as it was simply in the execution of one of the provisions embraced in his contract.

(10) GONZALO VÁZQUEZ DE CORONADO, AUTHORIZED BY
THE AUDIENCIA OF GUATEMALA TO CONTINUE THE
WORK OF DISCOVERY.

On the 8th of October, 1601,¹ Doctor Alonso Criado de Castilla, Governor and Captain-General of Guatemala, and the President of the Royal Audiencia located there, delivered in its name a *provisión* (a form of writ or decree) authorizing the Adelantado of Costa Rica, Don Gonzálo Vázquez de Coronado, then the Governor of that province, to undertake an expedition therein for the purpose of subjecting the Indians and the provinces to be pacified, from the settled and pacified portions of Costa Rica as far as the borders of Veragua and Panama; that is to say, all the territory that was included from the North Sea to the South Sea and the Valley of Chiriquí.

(11) FOUNDING OF THE CITY OF SANTIAGO DE
TALAMANCA.

Afterwards, on April 1, 1605, the Governor of Costa Rica, Don Juan de Ocón y Trillo, successor of Don Gonzálo Vázquez de Coronado, granted authority to Don Diego de Sojo to go out and chastise the Moyaguas Indians, and others, in the neighborhood of the village of Tariaca, against whom complaint had been made by the inhabitants of the last named village for wrongs done

¹Fernández, *Documentos*, Vol. V, p. 106.

them in the effort to compel the latter to rise against the Spaniards whom they were serving. Sojo succeeded in completely subjecting the natives of Ateo, Viceita, Quequexque, Usabarú, Munagua, Xicagua, Acaque, and Cabécara; and in order to maintain these conquests he founded, at the *Real de Viceita* (Camp Viceita), Province of Ateo, in the Valley of Duy, on October 10, 1605 (Doc. No. 72), the city to which he gave the name of "SANTIAGO DE TALAMANCA." He provided that city with local officials and laid out its district as follows:

"In latitude all the land from the top of the Cordillera to the North Sea; and in longitude, from the Tarire River and the ford that is crossed going from the said city to the Province of Tariaca, all the territory which runs to the east, which is the length of that province, as far as the Escudo de Veragua, which is the end that separates this government from that of Veragua."

The founding of the chief town of the district of Talamanca, made by Don Diego de Sojo, as the Deputy of Governor Ocón y Trillo, was preceded by a formal reconnaissance of the Tarire River which was to serve as its port and as a route of communication therewith. The reconnoitering expedition was carried out by the order of Sojo on the 4th of September of the year mentioned (1605), by Captain Pedro de Flores and Sergeant Martín de Beleño, accompanied by eight other persons as assistants, all of whom certified that from the North Sea to Camp Viceita (the site of the settlement mentioned), the distance was eight leagues, more or less, over level and dry land, and that the river was navigable for rafts and canoes to within one league from the camp, and that at its mouth there was a commodious and safe port for frigates, for there was a depth of three *varas* (Spanish yards) on the

bar at low tide. This was sounded and a narrow bank of sand was found, running from east to west, which is crossed from north to south. The neighboring coastal land was all low, and on the northwest side there was a small hummock island about a quarter of a league from the mainland.

(12) ALLOTMENTS OF INDIANS MADE BY DIEGO DE SOJO.

On October 18, 1605, the same Captain, Diego de Sojo, proceeded to parcel out the conquered Indians among the *conquistadores* (those who had been engaged in the conquest) domiciled in the city of Santiago de Talamanca. This was done in the following manner: He first set aside one-third of the Indians of the Province of *Ateo*, who, with their cacique, called Ygrama, were allotted to the King; of the two-thirds remaining a part was taken by Simón Sánchez de Guido and Pedro Pérez, Spanish residents of that place; in the Province of *Viceita* a part were taken by Perafán de Rivera, Diego Sánchez Picón, Francisco Ferreto, Diego de Acevedo and Juan Esteves; the village (*pueblo*) of *Térrebe* was taken by Diego de Sosa and Juan Alonso; the village of *Curaqua* was taken by Pedro Sánchez de Oviedo; the village of *Quequexque* was given to Martín de Beleño and Antonio Rodríguez; the village of *Usabarú* was given to Pedro Flores and Juan Fernández; the villages of *Zucaque* and *Arán* to Pablo Milanés; the village of *Xicagua* to Felipe Monge; the village of *Muyagua* to Juan de Araya; that of *Cabécara* to Francisco Rodríguez and Domingo López; and the village of *Coxirón-Ducagua* to Luis de Fletes, Baltasar González and Juan Gallo de Escalada.¹

¹Fernández, *Documentos*, Vol. V, pp. 126-129.

All of these villages (*pueblos*) were embraced within the area between the right bank of the Tarire River and the west shore of the Bay of Almirante; and there were left for conquest and distribution the islands of the bay and the Indian settlements of Tierra Firme in the vicinity of the latter and in the interior to the line of the Dukedom or province of Veragua.

The village of Ciruro belonged to the Valley of the Duy, in the Province of Talamanca, the pacification and settlement of which were assigned to the Adelantado, Don Gonzalo Vázquez de Coronado. In this village an *encomienda* (allotment of Indians) was made by the Governor, Perafán de Ribera, in favor of Matías de Palacios, and on the death of the latter Catalina de Palacios, the wife of Gaspar de Chincilla, succeeded to the allotment, and in such capacity petitioned the Audiencia to be protected in the possession of said village, her rights having been disputed by Juan López de Ortega, Andrés Pérez and Francisco Rodríguez. The Audiencia of Guatemala heard the case and on August 20, 1609, issued a renewal of the decree affording the protection sought, as prayed for in the petition, and it was verified by the same Adelantado in person in the city of Santiago de Talamanca of the Valley of the Duy on March 14, 1610.¹

(13) SUIT BETWEEN GOVERNOR OCÓN Y TRILLO AND THE ADELANTADO GONZALO VÁZQUEZ DE CORONADO.

As was natural to be expected conflicts arose between the two chief provincial officials, one the Governor of Costa Rica, Ocón y Trillo and the other the Adelantado of Costa Rica, Vázquez de Coronado, the former having

¹Fernández, *Documentos*, Vol. I, pp. 154-167.

been the founder of the city of Santiago de Talamanca, and the latter the authorized pacificator and settler of that territory under the Royal *provisión* issued by the Audiencia of Guatemala. The matter was determined by the *provisión* of the Royal Audiencia of March 6, 1610, in which it was declared that the said city was subject to the jurisdiction of the Adelantado.

(14) LETTER OF FRAY AGUSTÍN DE CEVALLOS TO THE KING.

On March 10, 1610, Fray Agustín de Cevallos, the Provincial of the Order of San Francisco, addressed to the King, Philip III, a long descriptive account of the Province of Costa Rica (Doc. No. 76), in which he stated that the said province was the end and conclusion of the Kingdom of New Spain on the eastern side, and bordered on the Kingdom of Tierra Firme, being 150 leagues in length from east to west and forty leagues at least—and undoubtedly more—in width between the North and South Seas. He described minutely the customs of the natives along the shore of the North Sea and, referring to the section extending from the Tarire River to the Escudo de Veragua, he gave the most interesting details as from one who knew every foot of the region. He devoted special attention to the Provinces of *Terribí el Grande* and *Terribí el Chico* (Big and Little Terribí), situated on the Bay of Almirante. He expressly mentioned the hills of *Corotapa*, likewise situated on the same bay at the place where the Estrella (Changuinola) River empties—a prodigious river, the golden sands of which were defended and guarded by a warlike nation called the Horobarós, that lived along its banks on the side emptying into the sea. This coast also had many ports, both in the rivers,

which were large, as well as in Almirante Bay and Bocas del Drago, with good and safe anchorage. But, he said, all the greatness of this territory was lost because the Spaniards of Costa Rica were so few in numbers, and he concluded by recommending that people be sent out from Castile to settle along the Estrella River.

(15) REBELLION OF JULY 29, 1610.

On July 29, 1610, early in the morning, there was a general uprising in the Talamanca region, which resulted in the death of a number of soldiers, women and children, the wounding of other soldiers, the burning of the city of Santiago and the siege of its population, which took refuge for thirty-six days in the fort of San Ildefonso, until the arrival of aid sent from the city of Cartago by the Governor, Don Juan de Ocón y Trillo. In consequence of this general insurrection, the city of Santiago was abandoned, and on being informed of this unfortunate event, the Audiencia of Guatemala made arrangements for the reconquest of that region.¹

II. FROM 1612 TO 1700.

(1) MEASURES TAKEN BY THE AUDIENCIA OF GUATEMALA FOR THE RECONQUEST OF TALAMANCA.

The measures taken by the Audiencia of Guatemala for the reconquest of Talamanca, after the compulsory abandonment of the city of Santiago which had been founded by the Governor Don Juan de Ocón y Trillo in 1605, were energetic and effective. Pedro de Oliver, the *Alcalde mayor* of Verapaz, was charged by the Audiencia with the execution of such reconquest and, with the help of Don

Fernández, *Documentos*, Vol. VIII, pp. 136-138.

Sebastián Chacón de Luna, the old site of Santiago was occupied by Oliver, in 1612, and chastisement meted out to the rebellious Indians. Sickness and other troubles, however, made the result of the campaign of little value and matters went on as they had been before (Doc. No. 83).

(2) PROPOSALS MADE TO THE CROWN FOR RECONQUEST.

Later on repeated proposals were made to the Crown to undertake the formal reconquest of the Talamanca region, among them the following: by Diego del Cubillo, in 1617; by Don Gregorio de Sandoval, in 1638; by Don Francisco Núñez de Temiño, in 1648; by Don Andrés Arias Maldonado, in 1659, and by Don Juan Fernández de Salinas, in 1651 (Doc. No. 85). Of these, only the one before the last, that of Maldonado, had any result. It will not be necessary to refer to these proposals further than to take from them such data as they may contain in reference to that important region.

In the memorial of Captain Diego del Cubillo Calderón (Docs. Nos. 79, 80), a resident of the city of Cartago in the Province of Costa Rica, the petitioner stated that it had been six years, more or less, since the Indians of the Valley of the Duy and the Mexicans of that province had risen in rebellion against the city of Santiago de Talamanca, the population of which was Spanish, and asked to be authorized to subjugate and reduce the Indians of this valley of Duy and the Mexicans, that being where the city of Santiago de Talamanca had been located. The *Fiscal* objected and the petition was not acted upon.

Don Gregorio de Sandoval stated in his proposal (Doc. No. 81) that the province of Duy was forty leagues, more

or less, from the city of Cartago, and that in the year 1610 the city of Santiago de Talamanca was located therein, from which the said Province and Valley of Duy took its name, the said valley having a cordillera or range of mountains in its midst and bordering on the Province of Guaymí, the settlements of which extended from the river called Estrella (Changuinola), Bocas del Drago or Bay of Almirante, as far as the Government of Veragua. That the city of Talamanca had been located on the bank of a river named "Tarire," which emptied into the North Sea at a distance of fourteen leagues from the city, and was navigable for sailing vessels. This petition also came to naught.

The petition presented, by Don Francisco Núñez de Temiño (Doc. No. 82) bore date of November 26, 1648. It stated as the boundaries of the province, the North Sea from the *Desaguadero* (outlet) of the Lake of Nicaragua to a point near the river known as *Calobébora*, having in front, in the sea, the *Escudo de Veragua*, an island distant between eight and nine leagues from the main land. Temiño spoke very enthusiastically about the Bay of Almirante, which was included within the territory of the province, and was formed by the three islands named Toxa, or Bocas del Drago, and sometimes known as "*Islands del Viejo*," for which reason it was the best and safest port known in the greater part of the world.

Special mention should be made of the petition of Governor Don Andrés Arias Maldonado, dated July 8, 1659.¹ In it that official stated that on the 12th of May previous he set out from the city of Cartago, the headquarters of the province, to investigate a port on the North Sea (the name of which was not stated, but from the description he

¹ Peralta, *Costa Rica y Colombia*, p. 52.

gives of it, it must have been the one known by the name of Portete in the Bay of Limón). It was a port sheltered from all winds, with an entrance large enough for two ships, while inside it could accomodate twelve or fourteen. The location was cool and there was a small stream of fresh water (the Piuta). He then explored the region along that shore, to the southeast, to see if it had any beach, and after traveling a short distance came to the end of the rough sea on the rocky coast and found a very smooth beach and a bay large enough to hold two hundred ships. The entrance was by two channels, separated by an island large enough for the erection of a fort to guard them. The entrance was to the eastward, where also the island sheltered the port. He found the country very pleasant and abounding in all kinds of products, the cacao groves being the best the governor had ever seen; there were also yuca and plenty of cotton trees and maize fields. Maldonado added that the Tarire River, in the Valley of the Duy, where the Talamanca and Ateo Indians lived, was some distance from the port that had been found. Six leagues from the latter was a river called Dugre and, in between, a fordable stream having but little water.

In a letter of the same date, addressed to the Secretary of the King,¹ he said among other things, that the Ateos lived on the banks of a river called Coyn (Coén).

(3) THE AUDIENCIA OF GUATEMALA AUTHORIZES DON RODRIGO ARIAS MALDONADO TO MAKE THE RECONQUEST.

Shortly afterwards occurred the death of Don Andrés Arias Maldonado, on November 25, 1661, and his son Don Rodrigo received from the Audiencia of Guatemala

¹Peralta, *Costa Rica y Colombia*, p. 54.

a *provisión*, delivered on October 17, 1662 (Doc. No. 86), authorizing the latter, in the capacity of Governor and Captain-General of the Province of Costa Rica, to proceed with the expedition he had undertaken into the territories along the Tarire River and the regions adjacent; these regions were inhabited by various tribes of Indians called the Urinamas, Ciruros, Moyaguas, Tariacas and others, which were subjected and conquered by Don Rodrigo and placed in a location on the bank of said river. And he likewise reduced and pacified the Talamanca Indians, all in conformity with the specific instructions detailed in the *provisión* mentioned. That *provisión* was based on the authority granted by the Crown to the Audiencia above named, by the Royal *cédula* of March 21, 1654.¹

Arias was deserted by his soldiers and left alone and abandoned in the heart of the Talamanca mountains, but some Indians who remembered the kind treatment they had received from him led him safely to the nearest Spanish village. After these experiences the Captain resolved to give up all worldly things and consecrate himself to religion.

(4) GOVERNOR SÁENZ CONTINUES THE WORK.

The successor to Arias, Don Juan Francisco Sáenz, undertook to carry on the subjection of Talamanca. At his own expense he sent thither Fray Juan de Matamoros, who certified, on May 4, 1675 (Doc. No. 88), that between the 2d and the 15th of February, immediately preceding, he had baptized a hundred and twelve Indians among the tribes of the Cabécaras, Nucuebas, Cururos, Chicaguas

¹Peralta, *La Géographie Historique et les Droits Territoriaux de Costa-Rica*, p. 207.

Tariqui, Tarici, Urinamas and Urarubos, who were embraced in that part of Talamanca which lay along the Tarire River on the North Sea as far as the Estrella (Changuinola) River and that there remained to be taught and baptized about five hundred families of the said tribes, which had been subjected by the efforts, and at the cost of the said governor; those who were baptized were settled in Coruro and Conemara.

In the report of Señor Sáenz to the Crown, dated December 25, 1676 (Doc. No. 90), that governor stated that the jurisdiction of the Province of Costa Rica extended from the mouth of the River *San Juan del Desaguadero* (outlet) of *Granada*, Nicaragua to the Estrella (Changuinola) River. It was proposed to make settlements and build churches in the territories where the Indians dwelt, between the Tarire and Estrella (Changuinola) River and as bells and furniture for such houses of worship were lacking, a request was made therefor.

(5) ROYAL CÉDULA OF 1691 RELATING THERETO. NARRATIVES OF BISHOP DELGADO, OF FRAY FRANCISCO DE SAN JOSÉ AND FRAY PABLO DE REBULLIDA.

By the Royal *cédula* of May 3, 1691,¹ orders were given to the Governor and Captain-General of Guatemala and the President of its Audiencia, to take steps in accord with the Council of the Indies, to arrange with Fray Diego Macotella, Provincial Vicar of the Order of San Francisco, for the advancement of the work of converting the Indians of the Province of Talamanca, in the Government of Costa Rica. A similar *cédula* was sent to the Governor and Captain-General of Costa Rica. On the same date the

¹Peralta, *La Géographie Historique*, p. 238.

King addressed a communication to Fray Diego Macotella telling him that the *cédula* referred to had been sent to the President of the Audiencia of Guatemala and to the Governor of Costa Rica and that he was very earnestly recommended to continue the work, for which purpose he was to put himself in communication with the said president and governor.

On December 24, 1692,¹ a very important report was made by the Bishop of Nicaragua and Costa Rica, Fray Nicolás Delgado, to the Supreme Council of the Indies, concerning the subjection of Talamanca by the Missionaries, Fray Melchor López and Fray Antonio Margil. In it that prelate stated that in compliance with the commands contained in the Royal *cédula* he laid before the Council the condition of the conversions among the Carib Indians who lived within the limits of his bishopric. He spoke very highly of the apostolic labors of the friars referred to. He alluded to their work in Talamanca among the Indians of that name—the Térrabas, Cabécaras, Chicaguas, Usamboros, Cabxes, Usuros, Moyagües, and many others—and recommended that their subjection be accomplished by the Divine Word, by good example, poverty and patience, in the way that had been done by the Fathers Melchor and Antonio.

On October 18, 1697, the report of Fray Francisco de San Joseph was written to the President of the Audiencia of Guatemala (Doc. No. 137), wherein he described in great detail the tribes embraced within the Province of Talamanca, the occupations and trade of the Indians, the number of their houses and *palenques*, their food, the distances between the tribes, etc. He included in this

¹Peralta, *Costa Rica y Colombia*, p. 78.

Province of Talamanca the Térrabas, the Chánguenes, the Tóxares islanders, the Urinamas and the Cabécaras. Appended to that report was an itinerary of all the villages from the Tarire River to the Island of Toja (Island of Colón) in Almirante Bay, with a statement of the number of days required for the journey in passing from one to another, the number of their inhabitants, and the number of the Indians who had been married and baptized.

This report was confirmed and amplified on March 26, 1698 (Doc. No. 138), by the Apostolic Missionary, Fray Pablo Rebullida, with the addition of some data as to many other Talamanca settlements.

In 1699 (Doc. No. 139), the Missionaries, Fray Francisco de San José and Fray Pablo de Rebullida, wrote concerning the Uninamas, the Cabécares, the Talamancas and Térrabas, the Chánguenes and the Tojas, saying that among the Chánguenes there still remained more than two thousand to be baptized, all within the jurisdiction of the Province of Costa Rica.

(6) THE MISSIONARIES GRANTED THE AID OF AN ESCORT.

In the year following, on July 22, 1700 (Doc. No. 140), Don Gabriel Sánchez de Berrospe, President of the Royal Audiencia, Governor and Captain-General of the Kingdom of Guatemala, with the advice and consent of the Board of the Royal Hacienda of that Kingdom and having before them the report sent in by the Reverend Fathers, Fray Francisco de San José and Fray Pablo Rebullida, the Apostolic Missionaries who had been engaged in the subjection and conversion of the heathen Chánguene Indians of Talamanca, in the Province of Costa Rica, recommended that these missionaries be given an escort

of thirty soldiers, each to be paid eight pesos per month. At their head was to be the Fieldmaster Don Miguel de Chavarría with a salary of sixty pesos amonthly. For this the necessary despatches were sent to the deputy of the Royal officials of Costa Rica, to arrange for the payment of the said leader and the thirty men, and for other expenses, both for maintenance as well as other things that might be needed by said men and the care and help of the Fathers, which expenses were to be paid out of the Royal Hacienda and take precedence over all other matters in accordance with the will of His Majesty and for his Royal service. The Governor and Captain-General of the Province of Costa Rica were required to enlist the thirty soldiers who were to support the said Fathers in the campaign of conversion.

(7) SEÑOR FAJARDO APPOINTED DEPUTY GOVERNOR OF
MATINA AND THE BOUNDARY OF HIS JURISDICTION
FIXED AT THE BAY OF ALMIRANTE.

The review of the documents relating to the 17th Century will be closed by noting one of considerable importance: the appointment by the Governor and Captain-General of Costa Rica, Don Francisco Serrano de Reyna, of Don Rafael Moximes Fajardo, on October 30, 1700 (Doc. No. 628), to the office of Deputy Governor and Captain-General of the Valley of Matina, Suerre and Reventazón, on the north coast of said province, its ports and jurisdiction, which were expressly extended by that instrument as far as Almirante Bay.

III. FROM 1703 TO 1749.

(1) REPORT OF GOVERNOR SERRANO DE REYNA TO THE CAPTAIN-GENERAL OF GUATEMALA.

The events connected with the conquest of Talamanca during the 18th century will now be related.

And first, reference will be made to the report sent by the Governor of Costa Rica, Don Francisco Serrano de Reyna, to the President, Governor and Captain-General of Guatemala, dated July 21, 1703,¹ in compliance with the instructions given by the Board of the Royal Hacienda in that capital. In that report Señor Reyna stated that the Reverend Fathers, the Missionaries Fray Francisco de San José and Fray Pablo Rebullida, set out from the city of Cartago, the latter by land and the other by way of Matina with the thirty men that had been recruited by government order. When Padre San José reached the Island of Toxa, the Indians attacked him and he made his escape badly wounded, besides having the misfortune to lose the largest boat with all the supplies. On account of this mishap he was compelled to leave the commander and most of the men on the mainland. In a small canoe he proceeded to Chagres, and from thence to Panama, where he received assistance from the President of that kingdom. He returned in a sloop, gathered up the men and sought to enter Talamanca by way of the mouth of the Estrella (Changuinola), but for lack of a pilot he was not able to accomplish this and had to go on to Matina, where, when about to enter the said river the sloop was seized by the enemy with all it contained. This loss brought his enterprise to an untimely end.

¹Peralta, *Costa Rica y Colombia*, p. 95.

It was the opinion of Governor Reyna that the region in which he had sought to settle was not suitable for that purpose and in its stead he suggested the more desirable Boruca country on the South Sea. He added that in accordance with the orders given he was proceeding with the enlistment of the thirty men for the escort of the missionaries.

(2) REPORT OF GOVERNOR HERRERA CAMPUZANO.

On June 8, 1705, the successor of Reyna, Don Diego de Herrera Campuzano,¹ in his turn reported as he had been directed to do by the Reduction Committee concerning the heathen Indians of Talamanca in the Province of Costa Rica. He stated that the ten men who had been determined upon to undertake the planting of yuca and plantains, had been sent forward provided with everything necessary for that purpose. They had been instructed to begin the work at Tuis and end at Urinama, that being the best location for the camp and *plaza de armas* for the fifty soldiers who were to enter the country for the subjection of those heathens. According to the opinion of the Reverend Fathers, Rebullida and Andrade, who were then in the city of Cartago, although the winter having already set in, the maize-fields could not be worked, the clearing not having been done during the dry season.

With regard to the appointment of a leader for the company of fifty men that had been recruited by the committee under Captain Don Francisco de Noguera, with all due respect he objected to the latter on account of his lack of experience and knowledge of penetrating wild and rugged mountain regions, and respectfully recommended

¹Peralta, *Costa Rica y Colombia*, p. 99.

for the command two practical and capable men who were also brave and experienced, Captain Don Francisco López Conejo, who had been *alcade ordinario* and captain of infantry in the Valley of Matina and on the shores of the North Sea, and Captain Esteban Nieto, who had already been in the mountains and had brought out many Indians.

(3) REPORT OF THE PADRE MARGIL TO THE PRESIDENT OF GUATEMALA.

In that same year, the Padre Fray Antonio Margil,¹ Apostolic Preacher and Missionary of the Province of Talamanca, reported, under date of September 14, 1705, as he had been asked to do by the President of Guatemala. He stated that he went with the escort of fifty men, under the command of Don Francisco de Noguera y Moncada, accompanied by two friars, missionary associates of his, named Fray Antonio Andrade and Fray Lucas Morillo y Rivera, and preceded by another friar named Fray Pablo de Rebullida, charged with gathering all the *caciques* or chiefs of those regions and getting them to come out and meet the expedition. In this the last named friar was successful, but Fray Margil had to turn back in obedience to the command of his superior, the Commissary General, resident in Madrid, for the purpose of founding a missionary college near the city of Zacatecas ordered by His Majesty.

He then proceeded to give important details concerning the subjection and stated that he had appointed the Padre Andrade to take his place, as President of the Missions. Regarding the expenses of the expedition, it was defrayed by the four payments advanced to the men; to each of the friars a jar of wine was provided for the celebration

¹Peralta, *Costa Rica y Colombia*, p. 101.

of mass, and to all forty pesos for wax and bread for the sacrament. He also recommended that the leader of the party be allowed something for presents to the Indians, such as beads and iron articles with which to attract them the more easily.

(4) REPORT OF THE MISSIONARIES ANDRADE AND
REBULLIDA.

On January 10, 1709 (Doc. No. 145), the Reverend Fathers Andrade and Rebullida made a report concerning the progress of the missions, describing minutely Talamanca and giving the itinerary of the villages embraced therein.

The number of churches built numbered fourteen, and therein the Indians attended mass and received Christian instruction in their own tongue. Peace was made between the tribes of Térraba and Talamanca and 950 children were baptized. In the first settlements 34 marriages were celebrated and roads were opened from the city of Cartago to the Province of Térraba, that being the last one that was reached. The number of children that had died was given, and also the number of the inhabitants of the region. Peace was reigning with the Tójares or islanders who belonged to the Térrabas tribe. Minute details were also given as to the Chánguenes and information as to the Zeguas, Almirantes and Guaymiles, who lived beyond the Chánguenes. He was of the opinion that it was not desirable to settle Spaniards in Talamanca, but rather recommended the plan of removing the Indians to Boruca, Chirripó and Teotique.

The itineraries of the Talamanca villages are complete, as well as the census of the population of the numerous villages mentioned in the report.¹

¹See Bishop Thiel, *Map of the Missionary Stations of Talamanca* (map XLVI).

It appears that the reduction was carried out with the greatest success in January, 1709, the month in which the report was made.

(5) INSURRECTION OF SEPTEMBER 28, 1709.

This proved a grave miscalculation, for on the 28th of September of that very year a general insurrection took place among the Indians of Talamanca, an account of which was given by Padre Andrade to the Audiencia of Guatemala in his letter of October 21, following.¹ The rebellion extended to all quarters, from Urinama on the banks of the Tarire to the Island of Tójar in Almirante Bay. The Indians killed ten soldiers, one woman, a child and the Reverend Fathers Rebullida and Zamora, burning the bodies, setting fire to the churches and images of the saints, and carrying off the holy articles. The commander of the soldiers escaped with eighteen of his men, two of whom were wounded. The Cabécaras, Talamanca and Terrabas leagued together, the Chirripó Indians alone not taking part; as to the rest, those who did not actually join in the attack knew of it, consented to it and kept silence.

(6) PROCLAMATION OF GOVERNOR GRANDA Y BALBÍN.

On February 15, 1710 (Doc. No. 148), Don Lorenzo Antonio de Granda y Balbín, Governor and Captain-General of the Province of Costa Rica, in compliance with an order received from the Superior Government of Guatemala, made a public proclamation in which the natives of the said settlements of Boruca, the Téxabas and the Terrabas and the islanders of Tójar were notified that to all those who would come in and yield obedience to the governor and captain-general of the King and

¹Peralta, *Costa Rica y Colombia*, p. 105.

Master a pardon was offered in his Royal name for the offences committed; but that those who should not thus obediently submit themselves were declared to be rebels and traitors to both their Majesties, deserving of being burned alive, as they would be in the war that was there-upon declared against them.

On the 28th of the same month (Doc. No. 149) the said Governor Granda y Balbín wrote to the President of Guatemala that the Ténabas had yielded their obedience and that with them came from the north four of the Térrabas who promised that their tribes would also come in and do likewise; and they went with some of those from Boruca and two Spaniards to open the road to Viceita, that being the best settlement in Talamanca. The governor went forward with one hundred and twenty men, and Don José de Casasola entered Talamanca by way of Chirripó, with eighty more.

It was proposed to have the Térraba Indians of the north brought into the settlements and not leave a single Talamanca Indian in the mountains, and also to seize the Island of Tójar and compel those of Bocas del Toro to surrender, so that there would be more than ten thousand natives comprised in the conquest of Talamanca.

(7) REPORT OF BISHOP GARRET Y ARLOVI.

A little before the general uprising His Majesty had directed the Bishop of Nicaragua and Costa Rica, Fray Benito Garret y Arlovi, to be very careful in regard to the maintenance and progress of the subjections and also to see that the natives were well treated; and that prelate undertook to report to his Sovereign concerning those matters shortly after the serious attack on the Talamanca missions. His report was dated November 30, 1711 (Doc.

No. 151), and it is a document historically of the highest rank; in it Bishop Garret lays before the Monarch the true and only justifiable reasons for the bad results of all the pacifications undertaken in the name, and with the authority of the King.

(8) ENTRY OF GOVERNOR GRANDA Y BALBÍN INTO TALAMANCA. APPROVAL BY THE CROWN.

Governor Granda y Balbín made his entry into Talamanca and arranged a juncture at San José de Cabécar with the Fieldmaster Casasola, establishing his headquarters at that place, from whence various expeditions were made and more than five hundred natives of both sexes and all ages were gathered up and carried bound into Cartago, where they were distributed among the soldiers of the expedition.

The course pursued by Governor Granda y Balbín met with the entire approval of His Majesty, as appeared by the two *cédulas* of September 1, 1713 (Doc. No. 152), one of which was directed to the President of Guatemala and the other to the Governor of Costa Rica. In these the Monarch stated positively that *the Talamanca conquest belonged to the Province of Costa Rica*, and directed a committee composed of officials and persons familiar with that territory to meet with the Superior or Superiors of the Missions and discuss very carefully what was best to be done to reestablish the missions of Talamanca, or develop those of Boruca and put them in a condition for perfect defense, in order to prevent any possible communication by the Mosquito *Zambos* with the territory situated between Costa Rica and Panama. The punishment inflicted upon the principal head of the insurrection was also approved, as well as the distribution of the Indians taken from Talamanca.

(9) THE NATIVES OF TALAMANCA PERSECUTED BY THE MOSQUITOS. NEW PROJECTS FOR RECONQUEST.

Some time elapsed during which the Indians of Talamanca were neglected and the Mosquitos and their allies found opportunities for enslaving them. In this serious situation the Talamancas sought favor with the provincial authorities of Costa Rica; and it was to this new circumstance that reference was made in the despatch of the Governor, Don Antonio Vázquez de la Quadra, to the Captain-General of Guatemala, under date of May 23, 1736,¹ concerning the offers of submission made by the Talamancas. The governor asked for the assistance of friars to take charge of their instruction.

In accordance with the representations made by Governor Quadra, the President of Guatemala addressed a communication to the King, on the 10th of September of the year mentioned,² objecting to the plan of undertaking the subjection of Talamanca by the use of arms and warlike efforts, as had been discussed in the committees, recommending instead that mild and prudent means should be pursued, and that an escort of not more than twenty-five men with their officers should be provided. In that communication he makes it clear, by a very positive statement, that *the region of Talamanca belonged to the Province of Costa Rica*, and that it was within the district of the *Kingdom of Guatemala*, next to Tierra Firme.

¹Peralta, *C. R. y Col.*, p. 132.

²Peralta, *C. R. y Col.*, p. 134.

(10) ROYAL CÉDULA OF 1738 PROVIDING FOR THE RECONQUEST.

Notwithstanding the very reasonable opinion of the President of Guatemala, His Majesty Don Philip V, by Royal *cédula* of May 21, 1738,¹ saw fit to provide that the subjection of Talamanca should be undertaken immediately, in the way that it had been determined upon by the committee at the meeting held in the city of Guatemala on June 5, 1726, and that the expenses for this enterprise should be appropriated for in preference to any others for which the collection offices in that city or in the rest of the jurisdiction of the Audiencia, might be liable to vassals resident in Spain, so that the subjugation and conversion of the Indians might take precedence over everything else, as provided by law. Therefore the President of Guatemala was commanded to give the most effective and necessary orders for the execution of the aforesaid Royal determination, as soon as he should receive the despatch.

In response to the order received, the President of Guatemala, in a letter addressed to the King, of November 4, 1740,² stated that although he had made preparations to carry out the Royal *cédula* of May 21, 1738, he had been compelled to suspend them and attend to other matters of greater urgency; he referred to the execution of the Royal order of August 30, 1739,³ in which he had been commanded to give his best attention to the extermination of the hostile Mosquito *Zambos* who threatened the Province of Guatemala. This course, he said, was all

¹Peralta, *C. R. y Col.*, p. 139.

²Peralta, *C. R. y Col.*, p. 157.

³Peralta, *C. R. y Col.*, p. 147.

the more necessary, because war against the English having been declared, he had been compelled to employ all the resources within reach in the defense of those dominions, without undertaking any new conquests of peoples who were doing no harm whatever, but were disposed to receive ministers who would instruct them without armed demonstration.

(11) ROYAL CÉDULA OF 1740 PROVIDING FOR THE RECONQUEST.

On May 24, 1740,¹ a Royal *cédula* was issued to the President of Guatemala, approving the steps taken by him for the subjection of Talamanca as set forth in the letter of November 15, 1737, and carried out in compliance with the Royal *cédula* of May 22, 1735. In it the Monarch reproduced—not only without correction, but with tacit approval—the words of the *Governor of Costa Rica*, by which he stated that from the year 1710 the missions in the mountains of Talamanca, under the jurisdiction of said Governor, had been suspended and had made no progress whatever.

The letter of the President of Guatemala, dated November 4, 1740, having been laid before the Council of the Indies, the suspension of the Royal *cédula* of 1738 was ordered; this was done by a further *cédula* dated October 31, 1742 (Doc. No. 165).

(12) THE CONVERSION OF THE NATIVES CARRIED ON WITHOUT AN ESCORT.

The work of teaching without escort went on under Fathers Mendíjur, Otalaurruchi, Vidaurre, Murga, Cabello and Núñez. In Cartago the Fieldmaster Fernández

¹Peralta, *C. R. y Col.*, p. 152.

de la Pastora deeming the missionaries in danger, determined to use twenty soldiers on his own account and with these and twenty-five of the King's men, all under his own command, he entered the mountain region and took out one hundred and twenty-three natives; these he settled near Cartago.

Subsequently, the same Pastora, with an escort of fifty men allowed him by the Superior Government of Guatemala and fifty more provided by himself, and some furnished by private individuals, made a second entry into Talamanca and brought out three hundred and fourteen natives, who were distributed among the villages of Atirro and Tucurrique, of Cartago.

(13) REPORT OF GOVERNOR FERNÁNDEZ DE LA PASTORA.

On June 1, 1749, the Governor Don Francisco Fernández de la Pastora,¹ made a report of his two expeditions into Talamanca to the Brigadier Don Alonso Fernández de Heredia, General Commander of Nicaragua and Costa Rica. The report was a very long one, the most important features of which are the facts that his work was carried on among the tribes of Viceita, Cabécar, Chánguene, the Nortés, Borucas, Franciscanos and Cabagras, and that three villages were formed with the natives brought out of the mountains—one at Cape Blanco, jurisdiction of Nicoya, with the adults and prisoners, for fear of their escape to the mountains; another with the smaller ones at Tres Ríos, near the city of Cartago; and another village, formed at their own request, by volunteers, in the section named Pejivaye, between Tucurrique and Atirro.

¹Peralta, *C. R. y Col.*, p. 168.

IV. FROM 1750 TO 1800.

(1) ROYAL CÉDULA OF 1756.

On November 30, 1756, the King of Spain issued a very important *cédula* (Doc. No. 170) concerning the Missions of Talamanca of the Province of Costa Rica, in which some very positive statements were made. Therein His Majesty approved the resolution taken by the Committee for the Royal Hacienda of Guatemala and communicated to the Monarch by the Governor and Captain-General of that Kingdom by the letters of June 10 and September 15, 1755; according to that resolution thirty men were to be added to the guard located in the city of Cartago, which had theretofore numbered but twenty, and had been designed especially to accompany and serve as an escort for the missionary friars occupied in the conversion of the natives in those mountains. The thirty soldiers thus added were to live with their families in the village of San Francisco de Térraba, so as to be there ready for the discharge of their duty. The appropriation for the friars was also increased to the sum of 450 pesos for each missionary. It was decided to suspend the Missions of Tologalpa (in Honduras), keeping up those of Costa Rica, and His Majesty, in closing, directed that two expeditions be made annually into Talamanca, in different places.

(2) REPORT OF PADRE URCULLU.

On November 3, 1763, the Padre Manuel Urcullu, Guardian of the College of the *Propaganda Fide* of Christ Crucified, of the city of Guatemala (Doc. No. 172), presented to the Superior Government of Guatemala, in compliance with the Royal *cédula* communicated thereto, a report concerning the missions and subjections of Tal-

amanca, of the Province of Costa Rica, distant from the city of Cartago more than eighty leagues. After describing the country, its situation, contour, productions, etc., he went on to say that the tribes known there as Talamancas were seven in number. The first of that name (Talamanca) embraced two others, called Cabécaras and Viceitas; the second, the Térrabas; the third, the Thóxares, by reason of living on an island of that name upon the shore of the North Sea.¹ The fourth was called Changuen and the fifth Zegua; the sixth Thorasque and the seventh Guaymí. Of these the three last named occupied the borders of the Kingdom of Tierra Firme and the four first above mentioned were located within Guatemala. So that it was the positive declaration of the superior head of the missions that the tribes of the Talamancas, Viceitas, Cabécares, Térrabas, Tójares and Changuenes unquestionably belonged to Costa Rica.

(3) ROYAL CÉDULA OF 1770 AND REPORT OF GOVERNOR
DÍEZ NAVARRO.

The Royal *cédula* of July 8, 1770 (Doc. No. 173), addressed to the council, the justices and *regimiento* (municipal administration) of the city of Guatemala is of much importance in the matter now being considered, because it distinctly appears therein, without room for question, that of the missions under the charge of the College of Christ Crucified of Guatemala, part belonged to the Kingdom of Tierra Firme and part to the Kingdom of Guatemala. It was the King who spoke: Tierra Firme, he decreed, embraced the four tribes of the Chánguenes, Doraces Dolegas and Guaymíes, who lived within the jurisdiction of

¹The Island of Tóxar or Colón in Almirante bay.

Panama, under the Government of Santiago de Veragua, BORDERING UPON THE MISSIONS OF TALAMANCA. As to the latter, although the Governor of Costa Rica approved the proposal of entry with an armed force—as did also the Committee of the Royal Hacienda and the Archbishop and the President of Guatemala—a complete report was asked for on account of its serious character.

To furnish the Crown with the data, the Superior Government of Guatemala procured the fullest information and the Engineer, Don Luis Díez Navarro, who was Governor of Costa Rica, reported on April 4, 1771 (Doc. No. 240), to the following effect. He stated that the Talamanca Missions were more than a hundred leagues distant from Cartago, the capital of the Province of Costa Rica. In that city the Reverend Fathers of the *Propaganda Fide* had their headquarters and there they had also a hospice from whence its missionaries went forth over the rugged, marshy and mountainous country, crossing numerous large rivers and passing through regions inhabited by those savage tribes. The Indians belonged to various nations, but there were two in particular that were the strongest, the Térrabas upon the South Sea and the Nortes upon the North Sea. These were bounded by the Almirante or Estrella River and by an island called Tójar, which they themselves had settled. This and the Talamanca coast was held by the Norte Indians of Talamanca. From thence the Zambos and Mosquitos went to the shores of the Province of Veragua, belonging to Panama; and from Veragua they returned again to their own habitation.

It was his opinion that if the Reverend Fathers proceeded apostolically they would not achieve any useful result; he advised, therefore, that the method used in the year 1743 be employed, and that San Francisco de Térraba be con-

verted into a center of operations, it being moreover a locality desirable for settlement by families of peaceful natives.

Another of the reports brought forth in compliance with the Royal *cédula* mentioned, was that made by Don José Joaquín de Nava, Governor of Costa Rica, which bore date November 15, 1771.¹ In that report Señor Nava supported the idea of an expedition, which the Reverend Fathers sought to make for the conversion of the natives of Talamanca. He advised that operations should begin early in January and terminate at the end of June or July, and considered that it would be necessary to have a hundred and fifty soldiers, with their commander, a second in command and sergeants, which force would occasion an expense to the Royal Treasury of \$9,756. He declared that the natives of Talamanca included the Cabécaras, Nortes and Viceitas, at one time pacified "*under the jurisdiction of the city of Santiago de Talamanca embraced under this Government.*" He recalled the two great insurrections of 1610 and 1709 and ended by saying that these Indians, being rebellious subjects, could be subdued and subjected by force of arms to obedience to their Sovereign—and this without any lessening of the benevolence in which they were held by His Majesty.

(4) REPORT OF THE GOVERNOR OF VERAGUA, BEJARANO.

In order to afford the Crown the utmost information possible concerning the Talamanca Missions and in conformity with the Royal *cédula* of July 8, 1770 (Doc. No. 173), the *Ayuntamiento* (Municipal council) of Guatemala asked the Governor of the Province of Veragua, Don Félix Francisco Bejarano, for a report. The report was pre-

¹Peralta, C. R. y Col., p. 195.

pared on September 15, 1775 (Doc. No. 175), at considerable length, and showed a good knowledge of the subject. According to Señor Bejarano, the name "Talamanca" is generic and embraces three tribes of Indians, to wit, the Cabécaras, Vizeytas and Norte-Térrabas, situated upon the north side between Matina and Bocas del Toro. The Cabécara and Vizeyta tribes were subdued in early times on the plains where the city of Santiago de Talamanca was located; from that city, at regular intervals, were established many and large villages of Indians, along the Royal highway as far as the city of Cartago. He referred to the rising in 1610, to the apostolic labors of Fray Antonio Margil and Fray Melchor López and to the new rebellion in 1709. He added that the Norte-Térrabas were subdued in great part, the village of San Francisco de Térraba upon the south coast and the village of Nuestra Señora de la Luz de Cabagra having been formed therefrom. He then gave the distances between the principal villages of the north and the south and between them and their headquarters in the city of Cartago. He approved the idea of expeditions for the conversion of the Indians, advising that they be removed to the south coast, since they were not numerous enough to settle the territory occupied by them. He deemed the expense suggested to be useless and excessive, and proposed a plan of operation that he thought would be better. He spoke at some length of the missions in the territory of Veragua and referred to the founding of the villages of San Francisco de Dolega, Nuestra Señora de los Angeles de Gualaca, San Antonio de Guamías and Jesús de las Maravillas of the Chánguina tribe, which five villages of Veragua were subjected to a civil and political administration and there was hope of increasing them and founding others, "by reason of the

abundant harvest of heathens presented by the mountain regions *as far as the frontier of Talamanca and the end of this jurisdiction.*" He then sets forth the facility with which the conquest of Talamanca could be made in comparison with the difficulties met with in the pacification of the Chánguenes, Doraces and Gualacas Indians of Veragua.

(5) DATA FURNISHED BY GOVERNOR FERNÁNDEZ DE BOBADILLA.

A map of Talamanca in considerable detail was asked for by the Court and on November 24, 1780, the Governor of Costa Rica, Don Juan Fernández de Bobadilla¹, forwarded it to the Audiencia of Guatemala. The Governor stated that Talamanca was composed of three tribes, to wit, the Talamancas, Viceitas and Térrabas, the last named made up of nine smaller tribes or groups, namely, the Duas, Zuerses, Zoerbie, Cunzones, Escogros, Domogros, Donomogros, Marunes and Curquines. These tribes, he said, had upon their border the four tribes of the Chánguenes, Dorasques, Zeguas and Guaymíes, who lived in the Province of Veragua.

On June 14, 1781, the King issued a Royal *cédula* to the Audiencia of Guatemala,² in which he directed the immediate preparation of the reports asked for regarding the need for making the expedition among the Talamanca Missions which had been requested by the friars of San Francisco of the College of Christ Crucified of San Francisco of Guatemala.

¹Peralta C. R. y Col., p. 215.

²Peralta C. R. y Col., p. 217.

(6) ROYAL CÉDULAS OF 1781 AND 1787.

On November 19, 1787 (Doc. No. 178), the Monarch issued a Royal *cédula* addressed to the Audiencia of Guatemala concerning the conquest of Talamanca, planned by the missionaries, in which he traced the history of that matter beginning with the Royal *cédula* of July 8, 1770. In the first mentioned *cédula* clear distinction was drawn between the missions belonging to the Province of Costa Rica and the missions belonging to the Province of Veragua, both of which had been entrusted to the same friars; and it was provided that the petition of the said missionaries be denied, wherein they sought to be relieved from the subjections under their care in the Province of Veragua, which were to be carried out upon the conquest of Talamanca; and he further charged the friars—the Observantines of San Jorge de Nicaragua, who were in control of the subjections of Boruca, Atirro and Tucurique—that they should help on their part in any way that they could in order that the missionaries of Talamanca might carry through the enterprise in question.

This was the condition of affairs at the end of the 18th Century. Then came the troubles that followed the French Revolution; and very little could be done at the beginning of the 19th Century under the Spanish domination in Costa Rica, toward the civilization of Talamanca or in any other matters of public administration.

V. FROM 1801 TO 1821.

(1) THE EFFORT TO CIVILIZE THE NATIVES OF TALAMANCA ALMOST ABANDONED FOR VARIOUS REASONS.

The grave difficulties that arose in Spain at the beginning of the 19th Century by reason of the war with Great Britain; the troubles in which she then became involved

with the Napoleonic Power, and finally those that the nation encountered later growing out of the rebellion of the Spanish colonies in America, had the natural and inevitable result of stopping entirely all efforts to secure the subjection of the natives who had not as yet fully submitted to Spanish domination. This result was also helped by the wise law, passed by the Spanish Cortes, that swept away all differences between the subjects of the Spanish Monarchy in Spain and America and freed the natives from the hateful servitude to which they had for so many centuries been subjected. The main stimulus that led to the conquests was then missing—the allotment (*encomiendas*) of the Indians, which had really been no more than a disguised slavery.

(2) ROYAL CÉDULAS OF 1802 AND 1803.

Mention will only be made here of two Royal *cédulas* that were issued: one on December 19, 1802, and the other on January 14, 1803—both addressed to the President of the Audiencia of Guatemala. The first one referred to and provided for the execution of the Royal *cédula* of November 19, 1787, to which reference was made at the proper place; while the second one confirmed anew that same Royal *cédula*. The 1787 *cédula* was noteworthy because it provided for the unification of the various settlements which, with the principal and original settlement, made up the Province of Talamanca; that is to say, the village of Pilar de Tres Rios, that of San José de Orosi, that of Nuestra Señora de Garabito, and that of San Francisco de Térraba, situated, as is well known, within the jurisdiction of the city of Cartago—a jurisdiction that had never been disputed. As a matter of fact, the four villages had been founded with Indians brought

out from the mountains of Talamanca, and this was the reason why in the Royal *cédula* of 1787, above cited, they were considered as a part or dependency of that native province, yet not entirely conquered.

(3) REPORT OF PADRE ROXAS.

In 1815, on the 3d of July (Doc. No. 217), Fray Ramón Roxas, Commissary and Prefect of the Order of San Francisco, to whom the Mission of Talamanca had been entrusted, made a report that had been asked for by the Illustrious Señor Bishop of Nicaragua and Costa Rica. The narrator went on to say that the conquest of *Talamanca* lay *within the confines of the diocese of Nicaragua and Costa Rica*, on the side that adjoined with that of Panama; he referred at length to the good condition of the Mission at the beginning of the 18th Century and to the insurrection that put an end to it in 1709; and also to the punishment that was inflicted upon the Talamancas Indians by the Governor of Costa Rica, who brought out of the mountains more than five hundred rebels, and hanged two of the ringleaders. With these rebels the village of *Pilar de los Tres Rios*, near Cartago, was founded and a portion of that of *Garabito* near Esparza. He recalled the founding of the village of *Térraba*, on the south coast, with Terbes or Nortes Indians; that of *Cabagra*, destroyed later by the Nortes and that of *Guadalupe*, subsequently added to *Térraba*. He referred to the efforts of the college in the new conquests of the Guaymies, Charibas and Chánguinas Indians, *in the Bishopric of Panama*, out of which five villages were afterwards turned over to the college that was founded in that diocese by the college in Guatemala.

This document, which is the last of those belonging to the Colonial Epoch that relates to the conquest of Talamanca, traces perfectly the line of separation between the apostolic labors of the friars of San Francisco that were carried on in the two dioceses; that is to say, in that of Nicaragua and in that of Panama, for the evangelization of the respective aborigines. The Guaymies, Charibas and Chánguinas, with the five villages that were taken from them, *belonged to Panama*; and *Talamanca*, including the four villages made up of people taken out of the mountains, *belonged to Costa Rica*, it being the same apostolic college that labored in both of these dioceses.

(4) THE VIRTUAL ABANDONMENT OF THE EFFORTS MENTIONED OF LITTLE IMPORTANCE, SO FAR AS REGARDS THE SOVEREIGNTY OF THE TERRITORY OCCUPIED BY THE INDIANS.

It is to be remembered that at the time Costa Rica and Panama attained their independence, in 1821, the aborigines of neither of these provinces were entirely under the control of the government of the mother country; but under the unquestioned principles of American International Law that fact has little importance so far as regards its effect in depriving the new nationalities that had been founded by the call to arms and had secured their independence of the full and entire sovereignty over the whole of the territory over which, in each of these provinces, the Spanish sovereignty had extended.

ANNEX II.

BOUNDARIES OF THE MOSQUITO TERRITORY.

I. AUTHORITIES AND WRITERS ON THE SUBJECT.

- (1) ROYAL CÉDULA OF 1714.
- (2) LETTER OF THE JUDGE SANTAELLA.
- (3) LETTER OF THE BISHOP GARRET Y ARLOVI.
- (4) REPORT OF DON CARLOS MARENCO.
- (5) ENUMERATION OF MOSQUITO SETTLEMENTS, MADE BY
GOVERNOR CARRANDI Y MENÁN.
- (6) THE COUNCIL OF THE INDIES.
- (7) STATEMENT BY COURTENAY DE KALB.
- (8) NARRATIVE OF DON JOSÉ LACAYO.
- (9) DON DOMINGO CABELLO.
- (10) DON LUIS DÍEZ NAVARRO.
- (11) THE COUNCIL OF JAMAICA.
- (12) GOVERNOR DON JUAN FERNÁNDEZ DE BOBADILLA.
- (13) THE "FULL ANSWER TO THE KING'S OF SPAIN LAST
MANIFEST."
- (14) COLVILLE CAIRNS.
- (15) INSTRUCTIONS OF THE VICEROY OF MEXICO.
- (16) DON ANTONIO DE ALCEDO.
- (17) MONTGOMERY MARTIN.
- (18) DON JOSÉ DEL RÍO.
- (19) DON JOSÉ DOMÁS Y VALLE.
- (20) THE BRIGADIER ABARCA.
- (21) DON DOMINGO JUARROS.
- (22) THOMAS STRANGEWAYS.
- (23) SIR WILLIAM S. WISEMAN.
- (24) COLONEL HODGSON.

- (25) JOHN WRIGHT.
- (26) PATRICK WALKER.
- (27) LORD PALMERSTON.
- (28) LONG, THE HISTORIAN OF JAMAICA.
- (29) MACGREGOR.
- (30) BRYAN EDWARDS.
- (31) JOHN BAILEY.
- (32) GEORGE SQUIER.
- (33) DON PEDRO FERNÁNDEZ MADRID.
- (34) LORD RUSSELL.
- (35) DON VICTORIANO DE D. PAREDES.
- (36) MR. MARCY.
- (37) FELIPE PÉREZ.
- (38) ABBOTT LAWRENCE.
- (39) DON ANTONIO MAURA.
- (40) DON ANTONIO RAMÍREZ FONTECHA.

II. WHAT THE GEOGRAPHICAL CHARTS SHOW.

III. RECAPITULATION OF THE PRECEDING DATA.

- (1) THE SOUTHERN LIMIT OF THE MOSQUITO TERRITORY
AT THE RIVER SAN JUAN DE NICARAGUA.
- (2) THE SOUTHERN FRONTIER OF MOSQUITO AT PUNTA
GORDA.
- (3) SOUTHERN BOUNDARY OF THE MOSQUITO COAST AT
BLUEFIELDS.
- (4) SOUTHERN BOUNDARY OF THE MOSQUITO COAST AT
PEARL LAGOON.
- (5) CENTER OF THE MOSQUITO COAST, CAPE GRACIAS A
DIOS AND THE RIVER SEGOVIA.
- (6) MR. MARCY FIXES THE RIVER SEGOVIA AS THE
BOUNDARY.

- (7) THE COUNCIL OF THE INDIES DECLARED THAT THE MOSQUITO COAST EXTENDED FROM THE JURISDICTION OF COMAYAGUA TO THAT OF COSTA RICA.

IV. ROYAL ORDER OF 1808.

I. AUTHORITIES AND WRITERS ON THE SUBJECT.

(1) ROYAL CÉDULA OF 1714.

The Mosquito territory is correctly defined by a document of unquestionable authority in this litigation—the Royal *cédula* of April 30, 1714 (Doc. No. 154), which reads as follows in this connection:

“* * * the settlements of the Carib Indians, Negros and *Zambos*, who are in the region called the Island of Mosquitos, between the North and South Seas, on the side of the Province of Nicaragua
* * * and there are on the coast of the North Sea more than fifty or sixty leagues over which their settlements are known to extend, *beginning at a distance of twelve leagues from the River San Juan in the jurisdiction of Nicaragua, where they have settlements and camps, up to twenty leagues from the city of Trujillo.*”

Given such distances, the western extremity of the Mosquito Coast coincides with the outlet of the *Tinto* River in Honduras, and its eastern extremity with the outlet of the *Rama* River in Nicaragua.

(2) LETTER OF THE JUDGE SANTAELLA.

The Judge of the Audiencia of Guatemala, Ambrosio Santaella y Melgarejo, advising the mother country of the execution of the aforesaid Royal *cédula*, adds some interesting details (Doc. No. 587). He says:

"It appears that in past times, in the year 1652, an English ship loaded with negroes having been wrecked upon the shoals that are called *Los Cajones* or *Tiburones*, lying to the eastward of Cape Gracias a Dios, the people and the negroes reached the shore upon the said coast, and being afraid of the Carib Indians they settled upon a ridge of keys lying to the south of said shoals, and in the course of time they succeeded in getting into friendly communication with said Indians; and having done this, free from danger, they crossed to the mainland of Cape Gracias a Dios * * *. From the *Brazuelo* (small arm) or mouth of the San Juan, the coast runs north, and traveling along the shore for a distance of fifty leagues are the settlements and Island of Mosquitos. * * * *The said settlements are extended as far as the mouth of the River Pantasma, also known as Segovia, which runs to Cape Gracias a Dios, and from said Cape as far as that of Honduras, which must be about thirty leagues. These Zambos also occupy the land which is formed by three outlets of the river, Segovia, Paraca and Pantasma, by which it empties into the North Sea. * * * They live also upon the shores of the North Sea, upon some of the level savannas, where they have a large lagoon in the middle, which empties into the sea through the mouth of an inlet, the entrance of which is difficult to find * * *. Here the one who rules them is located * * *. At a distance of four leagues from the mainland is the island they call Mosquitos. * * * The section called Punta Gorda is upon the banks of the Jaramillo River."*

These two papers are enough to fix very accurately the Mosquito territory, which never extended down to the River San Juan de Nicaragua, and still less did it reach to the south of that stream; but, to satisfy any possible doubt, the scattered data that relate to this matter will be reviewed—both that of Spanish origin

during the colonial period and that from foreign sources, prior and subsequent to the time of independence.

(3) LETTER OF THE BISHOP GARRET Y ARLOVI.

Fray Don Benito Garret y Arlovi, Bishop of Nicaragua and Costa Rica, as appears by two statements he addressed to the King of Spain from the city of Granada, on November 30, 1711 (Docs. Nos. 150 and 151), concerning the urgent need of subjecting the Mosquito Indians and the *Zambos*, believed that the territory occupied by them and the lands of the aforesaid Mosquitos, extended along the shore of the sea, from the mouth of the San Juan River to the city of Trujillo in the Province of Honduras, the length of which was about sixty leagues. Their first settlement was the one called "*Punta Gorda*," twelve leagues from the San Juan River toward the north; and their last settlements were located upon what were called the "*Mosquito lagoons*;" so that the territory actually occupied by them must have had a length of about forty-eight to fifty leagues. The width of their lands was not exactly known, nor was it uniform in width. The settlements of those Indians, of which he had knowledge up to that time, were as follows: First "*Punta Gorda*," which was separated into three hamlets or villages, about a gun shot distant from each other; then, making the circuit of the *Laguna Grande* (Great Lagoon), within the distance of a pistol shot were three villages, one called "*San Cristóbal*" and another "*Panamacá*," but the name of the third was not known; in still another lived the governor, called *Piquirín*, and fourteen leagues further inland the Indians had the big village where the petty king lived, who was called *Guitune*.

The southern limit of the Mosquito country was believed by Bishop Garret to be *Punta Gorda*, twelve leagues to the north of the River San Juan de Nicaragua.

(4) REPORT OF DON CARLOS MARENCO.

In a report addressed by Don Carlos Marengo, at San Felipe de Puerto Belo, on February 11, 1731, to General Don Manuel López Pintado, concerning the Mosquito Indians and *Zambos*, the territories occupied by them, the depredations they committed and the way to exterminate them, he used the following language:

"The Provinces of Nicaragua, Comayagua and Costa Rica have for many years suffered from the incursions, the robberies and the ravages perpetrated by the hostile *Zambos* of Mosquito and their English allies and pirates, who have settled and mingled with them upon the shores of the North Sea, *extending from the mouth of the River San Juan and Punta Gorda to Honduras*, in the jurisdiction of Comayagua, the distance of which, according to the experience of the pilots, is more than two hundred leagues from east to west, and this is held and possessed by the *Zambos* and those with them, in different settlements and upon different plains and rivers."

(5) ENUMERATION OF MOSQUITO SETTLEMENTS MADE BY GOVERNOR CARRANDI Y MENÁN.

Don Francisco Antonio de Carrandi y Menán, in a report sent by him to his superior, the Captain-General of Guatemala, dated April 5, 1738 (Doc. No. 625), enumerated the settlements making up the territory of the *Zambos* Mosquitos, as follows:

"*Agualatara, Tumla, Gualpasigsa, Guagua, Suinta, Sanyaguala, Cabalara, Aguastara, Norosbila, Taulavera, Dacora, Suculinlaya, Oliguita, Casca, Aguasdacora, Xinasdacora, Cabalara, Guane, Culunque, Guanquil, Sane, Tabancana, Cruta, Caorquera, Suynta, Catasqui, Cutuca and Gualpasigsa.*"

¹León Fernández, *Documentos para la Historia de Costa Rica*, Vol. IX, p. 194.

Not one of these settlements ever belonged on the north coast of the Province of Costa Rica.

(6) THE COUNCIL OF THE INDIES.

At a meeting of the Council of the Indies, held on July 8, 1739 (Doc. No. 162), the following statement appears in relation to the territory called Mosquito:

"* * * they (the *Mosquitos* and *Zambos*) occupy at the present time more than sixty leagues of land, extending from the jurisdiction of *Comayagua* as far as that of *Costa Rica*, of the dominions of Your Majesty, adjoining the coasts of the North Sea, their territory being in width only three leagues of productive and habitable land extending up to the slope of the mountains. * * * In those sixty leagues they have established for their dwelling places twenty-four settlements * * *."

The Mosquito Coast, therefore, did not embrace the littoral of Costa Rica.

(7) STATEMENT BY COURTENAY DE KALB.

From the work entitled: "*Nicaragua: Studies on the Mosquito Shore in 1892*," by Courtenay de Kalb (pp. 7, 8), the following facts are taken:

"The first authentic statement of the territorial claims of the Mosquito Indians is found in the work entitled: "The Mosquito Indian and his Golden River," written by one "M. W." in 1699, eleven years after the end of piratical control, and printed in 1746 'for Henry Lintot and John Osborn, at the Golden Ball in Paternoster Row.'

"According to this traveler, who was an Englishman, the Mosquito territory began at *Cape Camaron*, on the coast of what is now *Honduras*, and extended as far as 165 miles to the south from *Cape Gracias a Dios*. This would end in *Pearl Lagoon*, thirty miles north of *Blue-*

fields, and 100 miles north of Greytown (*San Juan de Nicaragua*). * * * Later the English laid claim to Bluefields, but it appears to have been an invasion by the British and their Mosquito 'allies' of the territory held by the Cookra Indians. From 1836, however, the limits were rapidly extended westward and southward, until at length the entire coast was claimed as far south as the *Rio San Juan del Norte*, including that river as far west as the Machuca Rapids, and its port of Greytown, then known as *San Juan de Nicaragua*.

(8) NARRATIVE OF DON JOSÉ LACAYO.

Don José Lacayo, Governor of Nicaragua, in a narrative dated in September, 1745 (Doc. No. 626), stated that at a distance of five or six leagues from the mouth of the San Juan lay the mouth of another large river that emptied to the left of the former, in the direction of Honduras; and thence, distant four or five leagues, lies *Punta Gorda*. A few leagues further on, he said, there were four large settlements, two of *Zambos Mosquitos* and two of Carib Indians allied with them. *And from thence to Honduras*, extending over more than a hundred leagues, were many settlements of *Zambos Mosquitos* and Carib Indians.

(9) DON DOMINGO CABELLO.

Don Domingo Cabello, Governor of Nicaragua, on January 20, 1770, declared that within the Government of Comayagua the *Zambos* and *Mosquitos* were established from *Cape Gracias a Dios* to *Cape Camarón* or *Román*, which point forms the Port of Trujillo.¹

¹*Historia Documentada*, by Antonio R. Vallejo; Vol. I, p. 142.

(10) DON LUIS DíEZ NAVARRO.

Colonel Don Luis Díez Navarro, engineer and director of the Royal forces, and the stations and frontiers of His Majesty, as appears by a report, dated April 4, 1771 (Doc. No. 240), made in compliance with a decree by the Audiencia of Guatemala, described the territory of the *Zambos* and *Mosquitos*, as follows:

"From here [Cape Gracias a Dios] they [the *Zambos* and *Mosquitos* Indians, on their forays] go to the coasts of the Province of Veragua, belonging to the Kingdom of Panama, from whence they return to their homes, which are along the coast, *from the three mouths of the River San Juan, Bahía Grande, Punta Gorda, the Pearl Islands, San Andrés, Santa Catalina, Cape Gracias a Dios, and as far as the River Tinto*, these being the localities inhabited by the aforesaid *Zambos* and *Mosquitos* Indians and English, all in a mingled condition."

(11) THE COUNCIL OF JAMAICA.

In a report submitted by the Council of Jamaica to His Honor Lieutenant-Governor Dalling, dated July 16, 1774, concerning the Mosquito Coast, the following appears:

"The boundaries and extent of the Mosquito Shore we find it difficult to define precisely: Cape Gracias a Dios, in fifteen degrees of north latitude, is reckoned the center of the sea coast, which extends *from Cape Honduras to the northern branch of the Desaguadero of the Nicaragua River San Juan*, about one hundred and eighty leagues.¹

¹Correspondence Respecting the Mosquito Territory, 1847-1848, British and Foreign State Papers, 1849-1850; Vol XXXVIII. p. 673; London, 1862.

(12) DON JUAN FERNÁNDEZ DE BOBADILLA.

The Governor of Costa Rica, Don Juan Fernández de Bobadilla, in a letter dated June 20, 1776, concerning the project on the part of the English of founding a formal establishment on the Mosquito Coast, stated that at "*Blackriba*" (Black River), at a distance requiring twelve or fourteen days navigation by canoes from the Port of Matina, there was a settlement of English, under the command of Robert Hodgson, the superintendent of that coast, to whom the Indians and Mosquitos were subject. Black River is the *Rio Tinto* of the coast of Honduras.¹

(13) "A FULL ANSWER TO THE KING'S OF SPAIN LAST MANIFEST."

From a pamphlet bearing the above title (pp. 64, 65), published in London, in 1779, the following description is taken:

"The Mosquito Shore extends by sea eastward from Point Castile, the boundary dividing it from the Bay of Honduras, to Cape Gracias a Dios, 87 leagues; and southward from Cape Gracias a Dios to St. John's River, 94 leagues."

(14) COLVILLE CAIRNS.

When the proposed evacuation of the Mosquito Coast by the English was under discussion, the Ambassador of His Catholic Majesty in London, entered into some negotiations with one Colville Cairns, in order to obtain from him data for the purpose of facilitating that operation and the subsequent colonization of that coast by the Spaniards. In the plan submitted to the Ambassador by Cairns, the following statement was made:

¹Peralta, *Costa Rica y Costa de Mosquitos*, p. 182.

"In the first place it is recommended that, as soon as the possession of that country [the Mosquito Coast] shall have been taken by His Catholic Majesty three forts shall be established, one at Black River (*Rio Negro* or *Tinto*), another at Cape Gracias a Dios and another at Bluefields (*Campos Azules*). The Cape being located in the very centre of the Mosquito Coast, it should be protected with a much greater force and be fortified in the best manner that the low situation of that region will permit in the beginning * * *. From the head of the *River Negro* (*Rio Tinto*) to Bluefields (*Campos Azules*) it is 300 miles."¹

(15) INSTRUCTIONS OF THE VICEROY OF MEXICO.

In the instructions given by the Viceroy of Mexico, under date of April 18, 1784, for the removal of the English from the Mosquito Coast, in the execution of the treaty entered into between Spain and England in 1783, the boundaries of that coast were referred to as *the River San Juan de Nicaragua and the Rio Tinto* (Black River).²

(16) DON ANTONIO DE ALCEDO.

Don Antonio de Alcedo, in his *Diccionario Geográfico-Histórico de las Indias Occidentales ó América* (Madrid, 1786), defines the word "*Mosquitos*," as follows:

"A country of northern America, between Trujillo and Honduras of the Kingdom of Guatemala, in 13° and 15° of north latitude and between 85° and 88° of west longitude. It borders on the north and east upon the North Sea; on the south upon the Province of Nicaragua and on the west upon that of Honduras."

¹Peralta, *Costa Rica y Colombia*, p. 236.

²Peralta, *Costa Rica y Costa de Mosquitos*, p. 231.

It should be noted that the parallel of 13° corresponds to Bluefields, as may be seen on the maps of Central America, issued by the American Hydrographic Bureau.

(17) MONTGOMERY MARTIN.

Montgomery Martin, in the "British Colonial Library," Vol. I, p. 136, referring to the Mosquito Coast, assigns to it, as boundaries, *from Cape Honduras to the River San Juan de Nicaragua*.¹

(18) DON JOSÉ DEL RÍO.

The Naval Lieutenant, Don José del Río, in the account given by him of his voyage to the Island of San Andrés and the *Mosquito Coast*, made by direction of the King of Spain, dated August 23, 1793 (Doc. No. 179), did not state the boundary of that coast on the north and west, but he did give the boundary *on the south* and fixed it at the *River San Juan de Nicaragua*.

(19) DON JOSÉ DOMÁS Y VALLE.

In a report signed at Granada on March 5, 1800, addressed to Señor Don José Domás y Valle, Captain-General of Guatemala, it was stated:

"The lands where the *Moscós* and other wild Indians or Caribs live extend *from the banks of the River Tinto to those of the River Mies*, which empties into the Bay of Bluefields, both inclusive; this space being about a hundred leagues in a straight line or in extent."²

¹British and Foreign State Papers; Vol. XXXVIII, p. 672.

²Manuel Serrano y Sanz, *Relaciones Históricas y Geográficas de la América Central* (Historical and Geographical Narratives of Central America), p. 289.

(20) THE BRIGADIER ABARCA.

The Brigadier, Don Roque Abarca, in his report to the Captain-General of Guatemala, dated May 9, 1804 (Doc. No. 194), also gives the southern boundary of the *Mosquito Coast* at the farthest, as *the River San Juan de Nicaragua*.

(21) DON DOMINGO JUARROS.

The Historian of Guatemala, Domingo Juarros, referring to the Provinces of Taguzgalpa and Tologalpa, settled by the uncivilized tribes of Xicaques, Moscos and Zambos, said that those provinces extended along the Atlantic coast, *from the Aguán or Román River to that of San Juan de Nicaragua*.¹

(22) THOMAS STRANGWAYS.

From another work, entitled "Sketch of the Mosquito Shore, Including the Territory of Poyais," etc., by Thomas Strangeways, the following extract is taken (pp. 4 and 5):

"The Mosquito Shore *extends from the Point of Castile or Cape Honduras, being the northern point of Trujillo Bay, to the River St. John's, called by the Spaniards San Juan de Nicaragua, being 182 leagues of shore.* * * * The area of the latter, which is one-third larger than the Kingdom of Portugal, forms an irregular triangle, of which Cape Gracias a Dios makes the apex. * * * Its greatest length from north to south may be estimated at 340 miles."

(23) SIR WILLIAM S. WISEMAN.

In 1820, Sir William S. Wiseman, Commander of the ship *Sophie* of the Royal British Navy, stated that the

¹British and Foreign State Papers; Vol. XXXVIII, p. 672

Mosquito Shore, properly so called, extended from the port of San Juan de Nicaragua, with a northerly trend and a little to westward, a distance of eighty leagues to Cape Gracias a Dios.¹

(24) COLONEL HODGSON.

From another work, entitled "Some Account of the Mosquito Territory," by Colonel Robert Hodgson, late Superintendent, Agent and Commander in Chief of the Mosquito Coast for Great Britain, the following extract is quoted (p. 12):

"The Mosquito Shore lies between 16° 10' and 10° 25' north latitude, and between 83° 55' and 87° 50' west longitude. The sea-coast (in a general view), forms an angle somewhat obtuse at Cape Gracias a Dios, in latitude 15° 0' and longitude 83° 55'. From this cape the extent westerly is 85 leagues, and southerly 95, making in the whole a coast of 180 leagues. The westerly extremity is Cape Honduras, latitude 16°, and the southern boundary is that branch of the Lake of Nicaragua River, in longitude 84° 10'."

(25) JOHN WRIGHT.

From another work entitled "Memoir of the Mosquito Territory," by John Wright (pp. 10, 12), the following is taken:

"The Mosquito Shore extends from the Point of Castile, or Cape Honduras, being the south point of Trujillo Bay, to the northern branch of the River Nicaragua called Saint Juan, on the southward, being 182 leagues of shore."

¹British and Foreign State Papers; Vol. XXXVIII, p. 672.

(26) PATRICK WALKER.

Mr. Walker, in his correspondence with Lord Palmerston, dated May 20, 1847, from Bluefields, fixed the boundaries of the so-called "Kingdom of Mosquito," *from the Román River to the mouth of the San Juan de Nicaragua.*¹

(27) LORD PALMERSTON.

Lord Palmerston, in a memorable diplomatic document, dated June 30, 1847, stated that the Government of Her Majesty were of the opinion that the coast frontier of the territories of the supposed "King of Mosquito," her protégé, "** * * should be maintained as extending from Cape Honduras down to the mouth of the River San Juan.*"²

(28) LONG, THE HISTORIAN OF JAMAICA.

In the collection of British and Foreign State Papers, Vol. XXXVIII, p. 708, an extract is given from the "History of Jamaica," by Long (Vol. I, p. 314), which says:

"The territory belonging to the Mosquito Indians (properly so-called) extends from St. Juan's River, a little to the southward of Punta Gorda, to Cape Honduras, or, as the Spaniards call it, Punta Castilla, running about 500 miles or upwards, uninterrupted by an Spanish settlement."

(29) MACGREGOR.

This same collection contains an extract from MacGregors' "Commercial Tariffs," (part xvii), which says:

"The Mosquito Shore, in America, extends from the northern branch of the Desaguadero (evidently the San

¹British and Foreign State Papers; Vol. XXXVIII, p. 673.

²British and Foreign State Papers; Vol. XXXVIII, p. 642.

Juan), in $10^{\circ} 21'$, to *Cape Gracias a Dios*, in 15° north latitude, and from *Cape Gracias a Dios* in $82^{\circ} 40'$ to *Cape Castile*, or *Cape Honduras*, in 86° west longitude from Greenwich."¹

(30) BRYAN EDWARDS.

These same State Papers (p. 791) also contain an extract from Bryan Edwards' "Account of the British Settlements on the Mosquito Shore, Drawn Up For the Use of the Government in 1773" as follows:

"From *Cape Honduras* to the northern branch or mouth of the *Lake Nicaragua*, commonly called *St. John's River*, in latitude about $10^{\circ} 25'$, lies the sea coast of the country commonly called the *Mosquito Shore*."

(31) JOHN BAILY.

John Baily, in his work on Central America, published in 1850, (p. 110) gives as the boundaries of the Mosquito territory, *Cape Honduras* and the mouth of the *San Juan River*.

(32) GEORGE SQUIER.

In his "Adventures on the Mosquito Shore," (p. 335), E. George Squier writes as follows:

"The designation of 'Mosquito Shore' can only properly be understood in a geographical sense as applying to that portion of the eastern coast of Central America lying between *Cape Gracias a Dios* and *Bluefields Lagoon*, or between the twelfth and fifteenth degrees of north latitude, a distance of about two hundred miles. The attempts which have been made to apply this name to a greater extent of shore have had their origin in strictly political considerations."

¹British and Foreign State Papers; Vol. XXXVIII, p. 778.

(33) DON PEDRO FERNÁNDEZ MADRID.

Don Pedro Fernández Madrid, in his opinion submitted to the Government of New Granada, under date of November 29, 1852 (Doc. No. 298), fixes with entire precision the limits of the Mosquito Coast. The text of that passage reads as follows:

"What the Spanish Government maintained, as you know perfectly well, Mr. Secretary, and what the geographers and navigators of America have always understood as the Coast of Mosquitos, is that which extends for more than a hundred and eighty leagues along the Atlantic littoral of this continent, beginning on the westward at Punta Castilla or Cape Honduras, the boundary which separates it from the bay of that name, latitude 16° north. From its start at that point, the Coast of Mosquitos continues in an easterly direction, toward Cape Gracias a Dios, forming a somewhat obtuse angle, and running from that point in a north-south direction it terminates at Punta Gorda, near the most northern arm of the River San Juan de Nicaragua, at 11° north latitude."

Señor Fernández Madrid, in referring to the determination of the British Government, which "* * *" after having examined various documents relating to the Mosquito Coast, is of the opinion that said Coast embraces the territory situated between Cape Honduras and the mouth of the River San Juan, "* * *," went on to say:

" * * this declaration, I say, was considered by our Government as a thing that should be taken up, because it narrowed the sphere of the question, giving to it precise terms, and BECAUSE REDUCING THE MOSQUITO COAST TO WHAT IT REALLY IS AND OUGHT ALWAYS TO BE UNDERSTOOD TO BE, it amicably settled in advance a basis for some compromise or bargain in case of need, as circumstances might make desirable."*

(34) LORD RUSSELL.

In a note addressed by Lord Russell to the Minister of Her Britannic Majesty in Washington, Mr. Crampton, dated January 19, 1853, he stated that the *Mosquito Coast* was a region that extended *from the River Román on the north to that of San Juan de Nicaragua on the south.*¹

(35) DON VICTORIANO DE D. PAREDES.

In 1855 Don Victoriano de Diego Paredes, Chargé d'Affaires of New Granada in Washington, published a booklet, entitled "The Coast of Mosquitos and the Boundary Question between New Granada and Costa Rica," in which will be found the following very important passage:

"The Coast of Comayagua or of Taguzgalpa and Tologalpa, or of *Mosquito*, as it was afterwards called, did not extend farther than the *River and Lagoon of Las Perlas*, as it is only lately, and for a particular purpose, that the name had been extended as far as *Punta Gorda*. More recently, with views whose qualification it is better to omit, it appeared very convenient to comprehend under the same name the Port of the *River San Juan*; and that which is most to be admired is that *these encroachments*, having met with little or no resistance, THE ATTEMPT WAS MADE TO CONVERT INTO MOSQUITO COAST THE ATLANTIC SEABOARD OF NICARAGUA AND COSTA RICA, AND EVEN A PART OF THE PROVINCE OF VERAGUAS."

¹British and Foreign State Papers, Vol. XLII, p. 157 (No. 142).

(36) MR. MARCY.

In a communication by Mr. Marcy, Secretary of State of the United States, to Mr. Dallas, the Minister of that country at the Court of St. James, dated July 26, 1856, referring to Bonnicastle's map, published in 1818, he stated that the *Mosquito Coast* appeared to extend on the south to the mouth of the *Segovia River*, at the twelfth degree of north latitude; and he added:

"That respectable author never could imagine it as reaching on the south to the *River San Juan de Nicaragua*."¹

(37) FELIPE PÉREZ.

In the work by Dr. Felipe Pérez on the geography of Colombia, 1883, the following statement was made:

"The coasts of *Comayagua*, first called *Taguzgalpa* and *Tologalpa* and afterwards *Mosquito*, did not extend beyond the *Lagoon of Las Perlas*, formed by two small peninsulas lying in front of the Islands of *San Andrés* and *Providencia*; but then, for certain reasons, the latter name [*Mosquitos*] was extended as far as *Punta Gorda*, then to the *Port of the River San Juan*, and finally, without any warning the name of *Mosquito Coast* was applied on the north and on the south to the whole of the *Atlantic littoral of Nicaragua and of Costa Rica*, and to a portion of that of *Colombia*. NOW THE NAME OF MOSQUITO COAST IS GIVEN NECESSARILY TO THE ENTIRE LITTORAL EMBRACED BETWEEN OMOA ON THE NORTH AND THE RIVER SAN JUAN ON THE SOUTH."²

¹Senate Ex. Doc. No. 74, 58th Congress, Second Session.

²*Geografía General Física y Política de los Estados Unidos de Colombia*, by Felipe Pérez, p. 137.

(38) ABBOTT LAWRENCE.

In a despatch addressed by Hon. Thomas F. Bayard, Secretary of State of the United States of America, to Mr. Phelps, the American Minister in London, dated November 23, 1888 (Doc. No. 378), he used the following language:

"The Mosquito Coast was a name bestowed in the last century to a tract of land of considerable but imperfectly defined extent, stretching along the shores of the Caribbean Sea to the southward and the westward of Cape Gracias a Dios, and was inhabited by a sparse population of wholly uncivilized Indians, between whom and the inhabitants of the British Colony of Jamaica some relations are said to have early existed. The meaning and character of these relations have been the subject of elaborated and careful consideration in correspondence between my predecessors and the Ministers of the United States in England and Central America, especially in a despatch from Mr. Abbott Lawrence to Mr. Clayton, of April 19, 1850, and in numerous other documents, long since given to the world by the Governments both of the United States and of Great Britain."

The most interesting part of the despatch of Mr. Abbott Lawrence (Doc. No. 629), cited by Secretary Bayard, reads as follows:

"Before entering upon their discussion, however, I desire to say a word as to the geographical limits of Mosquito, which are by no means accurately defined, even in the claim made by Her Majesty's Government.

"There is upon the eastern coast of Central America, between Cape Honduras on the north and the San Juan River on the south, (possibly extending as far even as Boca del Toro), a tract of low, swampy, unhealthy land, of a various width, and rising in its

western border into highlands and mountains. The lower part of this country has never been much occupied by Europeans, in consequence of its insalubrity. The mountainous parts are said to contain but little valuable mineral stores. At the time of the discovery by Columbus, and until within a comparatively recent period, it was inhabited by some fifteen or sixteen tribes of Indians, speaking different languages, and often at war with each other; and, among others, there was a *tribe known as the Mosquitos*, (so called by the early voyagers from the abundance of *Moscas* found on the coast), living between *Cape Honduras* and *Cape Gracias a Dios*. They gradually overcame and almost exterminated the more southern tribes, aided perhaps by the *Bucaniers*, and by degrees the name of *Mosquito* came to be applied to all *living north of the Bluefields*; and I think, in all the discussions of the last century relating to this subject, *the Mosquito country was never understood to extend far, if at all, below that river*. It is now defined by Lord Palmerston as reaching to the *San Juan River*, embracing the northern bank, so as to take in *San Juan de Nicaragua* (Anglicized into *Greytown*), and command the mouth of the river. In my opinion, it is quite immaterial where the Royal geographers are directed to draw the line, as I am satisfied the whole claim is without just foundation. *All the good maps of the sixteenth, seventeenth and eighteenth centuries, French, Spanish, Dutch and English, carry Honduras from coast to coast, Nicaragua the same, and fix the southern terminus of the Mosquito shore at or near where I have indicated."*

The geographical maps of the 16th, 17th, 18th and 19th centuries fully confirm the conclusion set forth, being unanimously in accord in not assigning to the ancient Province of Taguzgalpa or Tologalpa and the territory of Mosquito a single inch of land to the south of the River San Juan de Nicaragua, that stream being also known under

the name of the *Desaguadero* (outlet or drainage channel) of the Lake of Granada, as may be seen in the list hereto appended.

(39) DON ANTONIO MAURA.

Don Antonio Maura, who was legal adviser of Colombia in the boundary arbitration with Costa Rica, afterwards defended Nicaragua in a similar proceeding with Honduras which was submitted to the arbitration of the King of Spain. In the *Alegato*, or Argument, subscribed by Señor Maura in 1905 (p. 115), he expressed himself in the following manner:

"Numerous proofs show as the extent of said zone (the Mosquito Coast), *from the River San Juan as far as the Port of Trujillo*, situated far to the west of Cape Camarón."

(40) DON ANTONIO RAMÍREZ FONTECHA.

In a paper published in 1908 by Dr. Don Antonio Ramírez Fontecha the distinction that exists between the Mosquito Coast and Costa Rica was clearly brought out. In it he said:

"In order to justify its right * * * Nicaragua cited no other document than the Royal *capitulación* or agreement made with Diego Gutiérrez. Taking this title at its proper value it related to *what is now Costa Rica and not to the Mosquito Coast*."¹

II. WHAT THE GEOGRAPHICAL CHARTS SHOW.

If the most noteworthy maps covering the period under discussion are examined separately, and in connection with the numerous texts that have been cited, it will be found that the situation of the Mosquito Coast, as shown

¹*El Arbitraje entre Honduras y Nicaragua*, p. 90.

by the geographical charts enumerated below (each with the year of publication and name of the author) appears to be indicated as follows:

1698. Van Keulen	{	Punta Mosquitos to the south of Gracias a Dios and Island of Mosquitos to the east of Punta Mosquitos.
1715. Sikkena.		
1703. De l'Isle.		Taguzgalpa to the south of the Yarapa (Segovia) River.
1754. Bellin.		Mosquitos to the west of Gracias a Dios.
1780. Bonne.		Mosquitos to the west and south-west of Gracias a Dios.
1785. Vaugondy.		Island of Mosquitos to the south-east of Gracias a Dios.
1785. Pownall.		Taguzgalpa to the south of Gracias a Dios.
1786. Faden.		From <i>Punta Gorda</i> to Cape Honduras.
1805. {	} <i>Carta Esférica.</i>	Between the Yare and <i>Bluefields</i> Rivers.
1809.		
1825. Navarrete.		Between the Tapatí and <i>Bluefields</i> Rivers.
1825. Brué.		Between Gracias a Dios and <i>Bluefields</i> .
1829. Thompson.		Between the Segovia River and Pearl Lagoon.
1849. Squier.		From Wanks to <i>Bluefields</i> .
1850. Wyld.		Between Cape Honduras and <i>San Juan River</i> .
1851. Fitz-Roy.		Between Barba, or Patook, and <i>Bluefields</i> .

1858. Kiepert. Between the *Indio River* and Punta Patuca
1889. Codazzi, Paz and Pérez. Between Gracias a Dios and *Blue-fields*. (Charts I, III, IV, V, XII, XV, XVII, XVIII and XIX.)
1889. Codazzi, Paz and Pérez. Between Gracias a Dios and the *San Juan River*. (Charts VIII, IX, XI, XIII and XIV.)

The following maps are especially authoritative:

That of *Faden*, on account of its official character in connection with the execution of the Treaty of 1786 between the English Crown and Spain, relating to the evacuation of the Mosquito territory by the English;

The map known as the "*Carta Esférica*" (Spherical Chart), of the Hydrographic Bureau of Madrid, of 1805, 1809, by reason of its having been filed in the case by Colombia;

That of *Navarrete*, it being recognized that its author was well versed in American historical matters;

That of *Thompson*, as being the work of a British diplomat, specially charged with the examination of conditions pertaining to the Central American Republic, immediately after its organization;

That of *Squier*, as being the work of a North American diplomatist, at the time that there was a warm controversy between the United States and Great Britain over the complicated and irritating affairs of the Protectorate of the latter Power over the much discussed Mosquito Kingdom;

And those of *Codazzi*, as appearing in an Official Atlas of the Republic of Colombia.

All of these authorities, moreover, establish the fact that the frontier was far to the north of the River San Juan de Nicaragua.

III. RECAPITULATION OF THE PRECEDING DATA.

Summarizing the foregoing data, the result is:

(1) The southern limit of the Mosquito territory is fixed at the *River San Juan de Nicaragua* by the following authorities:

The Engineer Don Luis Díez Navarro; the author of the pamphlet entitled "A Full Answer, etc., " (1779); the Council of Jamaica; Montgomery Martin; Thomas Strangeways; Domingo Juarros; Sir William S. Wiseman; Colonel Robert Hodgson; John Wright; Lord Palmerston; Patrick Walker; Long, the Historian of Jamaica; McGregor; Wyld; Maura; Lord Russell, and Codazzi.

Among the names mentioned, only three are of Spanish origin (Navarro, Juarros and Maura); all the rest, with one exception—the Colombian, Codazzi—are British and were interested in the enlargement of the boundaries of the Mosquito territory, which during the colonial period was under the influence of Great Britain and later came into its actual possession, under color of a protectorate over the so-called Mosquito King—a protectorate that was ended by the Zeledón-Wike Treaty of 1860. With regard to Codazzi, in nine out of fourteen maps in his Atlas, he adopts *Bluefields* as the extreme limit.

(2) The frontier of the Mosquito territory was placed at *Punta Gorda*, a place located about twelve leagues to the north of the River San Juan, by the following authorities:

Bishop Garret y Arlovi; Don Carlos Marengo; Don Pedro Fernández Madrid; Faden; Don José Lacayo, and, particularly, the Royal *cédula* of 1714.

The last-mentioned document is enough to firmly establish that demarcation; but it was strengthened by

the evidence and authority of a Bishop and of a Governor of Nicaragua, of a Governor of Portobelo, and even more, by that of a neo-Granadian of the eminence of Señor Fernández Madrid, a specialist in matters of that character, who points out *Punta Gorda* as the boundary, although he does carry it very much farther to the south than the extreme limit designated by two other illustrious neo-Granadians—Señores Paredes and Pérez, referred to below. Kieper placed the boundary at the *Indio* River.

(3) The southern boundary of the Mosquito Coast was located at *Bluefields* by the following:

Don José Domás y Valle; the "*Carta Esférica*" of 1805, 1809; Brué; Navarrete; Fitz-Roy; George Squier; Abbott Lawrence; the Brigadier Abarca, and Codazzi; that is to say, by four authorities of Spanish origin, one British, two North American, one French and one from a Colombian official source.

(4) The frontier is put at "Pearl Lagoon" by the author of the pamphlet entitled "The Mosquito Indian and his Golden River" (1699); Thompson; Courtenay De Kalb; Don Victoriano de D. Paredes, and Dr. Don Felipe Pérez. The two latter—neo-Granadians—give great weight to the allegation by reason of the character with which the first of these two was invested as Chargé d'Affaires of New Granada in the United States at the time the publication was made, and the fact that the second, when he wrote, was the official geographer of his country.

(5) Cape Gracias a Dios and the Segovia River were respectively adopted as the *center* of the Mosquito Coast by the Irishman, Colville Cairns, and by the Audiencia Judge Santaella. In view of the situation of those places,

it is impossible that the southern boundary should have reached to the River San Juan.

(6) The Secretary of State of the United States, Mr. Marcy, fixed the Segovia River as the boundary.

(7) And, lastly, the Council of the Indies, in its opinion in 1739, declared most positively that the Mosquito Coast extended *from* the jurisdiction of Comayagua *to* that of Costa Rica. It is evident that such territory was confined to the shores of Nicaragua, inasmuch as the indispensable addition of "inclusive" was not added in designating the terminals.

This fact is further confirmed by the enumeration of the Mosquito settlements made by Governor Carrandi y Menán; by the text of the instructions given by the Viceroy of Mexico, in 1784, for the evacuation of the Mosquito territory by the English; by the distance between the Port of Matina and the location of the Zambos Mosquitos, calculated by Fernández de Bobadilla, to require from twelve to fourteen days' navigation, and by the differentiation established by Señor Fontecha between the territory of Costa Rica and that of Mosquito.

Many other facts entirely in harmony with the foregoing, found in cyclopedias, dictionaries and other works of reference, have been omitted because the labor of recording them would be superfluous in view of the remarkable uniformity of opinion concerning the *extreme limits* of the country designated as the "Mosquito Coast," occupied by Indians, negroes, and adventurers. These *extreme limits* were: *on the north the Cape of Honduras or Punta de Castilla, and on the south, at the farthest, the branch of the outlet of Lake Nicaragua, called the San Juan River.* No Mosquito territories were washed by the other two branches of that outlet—and much

less by the other streams that flow into the sea along that stretch of shore which extends southward from the San Juan River. That extent of coast taking in the Suerre, Matina, Moín, Tarire, Tilorio and Bocas del Drago, as far as the Escudo de Veragua, was constantly the scene of depredations by those barbarians, as were the Spanish settlements of Honduras and Veragua, but it never occurred to anyone that they constituted an integral part of the Mosquito Coast, which was the occasion of so many difficulties in the diplomatic relations between the governments of Madrid and London.

IV. ROYAL ORDER OF 1808.

That the southern end of the Mosquito Coast never did reach as far as the River San Juan de Nicaragua during the epoch immediately preceding the date of the emancipation of the provinces of the former Captaincy-General of Guatemala, is conclusively demonstrated by the text of the following document, which definitively settles the question and dissipates all doubt in that regard.

This document is the Royal order of March 31, 1808 (Doc. No. 198), the material portion of which reads as follows:

“The King has been advised of what Your Worship stated in your letter of January 3, 1806, (No. 609), and that of June 18, of the same year, (No. 652), accompanying the statement in regard to navigation and commerce of the River *San Juan de Nicaragua*, Your Worship proposing that its opening be continued, and that to encourage the clearing and cultivation of the immediate lands there be granted to its inhabitants the same favors which by Royal order of November 20, 1803, were conceded to the new settlers of the *Coast of Mosquito*, exempting also

from duties and tithes for ten years the products harvested *within a distance of ten leagues* of the river on either of its banks."

It is clear that if San Juan de Nicaragua had formed a part of the Mosquito Coast in 1808, the foregoing Royal order would have been wholly irrelevant; but as this cannot be admitted for a moment, the conclusion is irresistible that the Mosquito territory did not reach within ten leagues of the San Juan River on the north, and, of course, much less could that territory have embraced any part of the shores of Costa Rica situated to the south of the said San Juan River.

ANNEX III.

THE TERRITORIAL PRETENSIONS OF COLOMBIA OVER THE MOSQUITO COAST REPUDIATED BY THE DIPLOMACY OF EUROPE, THE UNITED STATES AND CENTRAL AMERICA.

- (1) COLOMBIAN DECREE OF 1824.
- (2) NEGOTIATIONS BY THE GOVERNMENT OF CENTRAL AMERICA IN 1825 AND 1829 FOR THE OPENING OF THE NICARAGUA CANAL.
- (3) TREATY OF 1846 BETWEEN THE UNITED STATES AND NEW GRANADA.
- (4) PROTESTS OF NEW GRANADA TO SECURE THE RECOGNITION OF ITS SOVEREIGNTY OVER THE MOSQUITO COAST.
- (5) THE GOVERNMENT OF THE UNITED STATES FIRMLY MAINTAINS THAT THE PORT AND RIVER OF SAN JUAN FORM NO PART OF THE MOSQUITO COAST AND THAT SAID RIVER, PORT AND COAST BELONG TO NICARAGUA.
- (6) OPINION OF MR. ABBOTT LAWRENCE.
- (7) THE CLAYTON-BULWER TREATY OF 1850 DESTROYS THE NEW GRANADIAN TERRITORIAL PRETENSIONS.
- (8) THE CENTRAL AMERICAN REPUBLICS RECOGNIZED BY THE UNITED STATES AS SOVEREIGNS OVER THE WHOLE OF THE TERRITORY COMPRISED WITHIN THE OLD CAPTAINCY-GENERAL OF GUATEMALA.
- (9) ADDITIONAL EVIDENCE IN SUPPORT OF THE CONTENTIONS IN SUBDIVISION NO. 5. NOTE OF MR. DOBBIN TO COMMODORE HOLLINS. NOTES BY MR. MARCY TO MR. INGERSOLL AND MR. MARCOLETA. MESSAGE OF PRESIDENT PIERCE.

- (10) FURTHER EVIDENCE IN SUPPORT OF THE CONTENTIONS IN SUBDIVISION No. 5. NOTE AND INSTRUCTIONS OF MR. MARCY TO MR. DALLAS. CLARENDON-DALLAS TREATY.
- (11) CAÑAS-JEREZ TREATY, 1858.
- (12) ZELEDÓN-WIKE TREATY, 1860. DEFINITIVE INCORPORATION OF MOSQUITO IN NICARAGUA. ALTAMIRANO-HARRISON TREATY.
- (13) DICKINSON-AYÓN TREATY, 1867.
- (14) NOTE OF MR. FISH TO MR. SCHENCK AND REPORT OF MR. EVARTS TO PRESIDENT HAYES.
- (15) CORRESPONDENCE BETWEEN COLOMBIA, NICARAGUA AND GUATEMALA, IN 1880 AND 1881, 1890 AND 1896. MEMORIAL PRESENTED BY DR. DON LORENZO MONTÚFAR TO THE LEGISLATURE OF GUATEMALA IN 1881.
- (16) NOTE OF MR. GRESHAM TO MR. BAKER, 1894.
- (17) AWARD BY THE KING OF SPAIN IN THE BOUNDARY LITIGATION BETWEEN HONDURAS AND NICARAGUA, 1906.
- (18) CONCLUSIONS.
- (19) THE LOUBET AWARD.

(1) COLOMBIAN DECREE OF 1824.

After the D cree of 1824 (Doc. No. 252), by which Colombia undertook to assume sovereignty over the whole of the Central American coast from Cape Gracias a Dios toward the island of the Escudo de Veragua, that republic persisted in the effort to get control of this extensive littoral region to the serious detriment of the Republics of Costa Rica and Nicaragua, which she proposed to entirely exclude from the Atlantic ocean. Happily, however, this

effort was, as it must have been, peremptorily repulsed, not only by the Federal Republic of Central America and by those of Costa Rica and Nicaragua (which were especially menaced) and by that of Guatemala, but by the other nations indirectly interested in the affair. A brief glance will, therefore, be taken at the history of the matter, which this remarkable claim always sought to disregard.

The port of San Juan de Nicaragua was entirely in the possession of the Captaincy-General of Guatemala at the moment when this province declared its independence of the Spanish monarchy; so that it was quite proper for the Federal Central American government to open it as a port of the republic, and it did so by a Decree of 1825.

(2) NEGOTIATIONS BY THE GOVERNMENT OF CENTRAL AMERICA IN 1825 AND 1829 FOR THE OPENING OF THE NICARAGUA CANAL.

The Minister of Central America in Washington, Don José Antonio Cañas, in 1825, initiated negotiations with the Government of the United States for the opening of a canal for inter-oceanic navigation across the Isthmus by way of the River San Juan and Lake Nicaragua, and the pretensions of Colombia were not set up as an obstacle to the progress of the same, although she had already at that time declared her pretensions to sovereignty over the Mosquito Coast.

The same thing was true in 1829, when arrangements were made by the Federal Government of Central America with a well known Dutch firm for that purpose, under the protection of H. M. the King of the Netherlands; but that arrangement fell through on account of the separation of Belgium from the Netherlands Union.

(3) TREATY OF 1846 BETWEEN THE UNITED STATES AND
NEW GRANADA.

By the general treaty of Peace, Friendship, Navigation and Commerce, between the United States of America and New Granada of December 12, 1846 (Doc. No. 281), the latter country, in Article XXXV, conceded to the former certain rights in the ports of New Granada, generally denominated as those of the Isthmus of Panama, from its southernmost extremity *to the boundary of Costa Rica*; and in exchange the Government of the United States guaranteed the perfect neutrality of the aforesaid Isthmus and the rights of property and sovereignty that New Granada held and possessed over said territory.

Such stipulations obviously prove that the Colombian territory came to an end *on the Isthmus of Panama*, upon reaching the frontier of Costa Rica, which stood in the way of its extending any further in a northwesterly direction; for if it were to continue, the Isthmus would be bounded not only by Costa Rica, but also by the territories of Nicaragua and Honduras, within which the Mosquito Coast lay.

It would have been, on the other hand, quite out of the question for the United States to maintain, as it did most persistently, *that the Mosquito Coast belonged for legal and historical reasons to the State of Nicaragua, and at the very same time guarantee to New Granada sovereign rights over that territory*. That would have been a contradiction. What the United States did do, on the contrary, was to *guarantee to Nicaragua its sovereignty over the Mosquito country*, by the Dickinson-Ayón Treaty, which will be discussed hereafter.

(4) PROTESTS OF NEW GRANADA TO SECURE THE RECOGNITION OF ITS SOVEREIGNTY OVER THE MOSQUITO COAST.

The Legation of New Granada in London made three protests for the consideration of the British government—one dated May 31 and July 1, 1844; another dated March 14, 1846, and the last, on April 29, 1848 (Doc. No. 288)—against the claims made by the latter government to the Mosquito Coast for the benefit of a native tribe known by the name of "Mosquitos," which was under the protection of Great Britain. The answer of Viscount Palmerston bore date of May 4, 1848 (Doc. No. 289), and in it *he positively declined to acknowledge any right, or interest, on the part of New Granada to intervene in the matter, for the fundamental reason that that republic DID NOT OCCUPY OR POSSESS ANY PART OF THE MOSQUITO TERRITORY.* As to the southern boundary of the latter, Viscount Palmerston declared that his government had recommended the San Juan River for such boundary, in order thereby to avoid "all dispute between Mosquito and New Granada." This was a most effective way to avoid a conflict as to frontiers, inasmuch as between the San Juan River and the Escudo de Veragua, *a territory was interposed* that Great Britain recognized as properly belonging to its legitimate owner, Costa Rica.

The point of view taken by Lord Palmerston was exactly the same as that expressed by the distinguished diplomat who then represented Great Britain in Central America, Mr. Frederick Chatfield, who, in a note addressed to his superior, above named, under date of April 15, 1847 (Doc. No. 283), said:

"The pretension of sovereignty assumed by New Granada to the whole of the Mosquito territory, will, I conceive, be found upon examination quite irregular * * *. The main point is whether the New Granadian Government has a just claim to any part of the Mosquito King's territory, or to any part of that of Central America * * * and I request to lay before Your Lordship such particulars * * *, trusting that what I shall state will appear * * * a sufficient ground for declining to recognize the right of New Granada to an extension of territory beyond the boundaries on the Central American side, as they existed previous to the independence of both countries of Spain, since it is demonstrable that New Granada HAS NEVER ACQUIRED EITHER A MILITARY OR CIVIL JURISDICTION OVER THE MOSQUITO AND CENTRAL AMERICAN TERRITORIES, NOR ANY TITLE TO TREAT FOR THE DIVISION OR APPROPRIATION OF STATES WHICH DO NOT BELONG TO IT."

The Chargé d'Affaires of Great Britain in Bogotá, Mr. Daniel F. O'Leary, wrote to Lord Palmerston, in a note dated June 29, 1847 (Doc. No. 284), as follows:

"THIS REPUBLIC [New Granada] HAS NO POSSESSORY RIGHTS ON THE COAST BETWEEN THE CHIRIQUI LAGOON (in the vicinity of which, at Boca Toro, she formed a settlement), AND THE RIVER SAN JUAN."

- (5) THE GOVERNMENT OF THE UNITED STATES FIRMLY MAINTAINED THAT THE PORT AND RIVER OF SAN JUAN FORM NO PART OF THE MOSQUITO COAST AND THAT SAID RIVER, PORT AND COAST BELONG TO NICARAGUA.

In a note addressed by Mr. Clayton to Mr. Foot, on July 19, 1849, the following appears:

"It is understood that New Granada sets up a claim to the Mosquito Shore, based upon the transfer of the military jurisdiction there to the authorities at Cartagena and Bogotá, pursuant to the Royal order of the 30th of November, 1803, and upon the 7th Article of the treaty between Colombia and Central America, by which those Republics engaged to respect their limits based upon the *uti possidetis* of 1810 * * *. With the conflicting claims of New Granada and Nicaragua we have no concern, and, indeed, there is reason to believe that they will be amicably adjusted. WE ENTERTAIN NO DOUBT, HOWEVER, THAT THE TITLE OF SPAIN TO THE MOSQUITO SHORE WAS JUST, AND THAT HER RIGHTS HAVE DESCENDED TO HER LATE COLONIES ADJACENT THERETO. THE DEPARTMENT HAS NOT HESITATED TO EXPRESS THIS OPINION IN THE INSTRUCTIONS TO MR. SQUIER, THE CHARGE D'AFFAIRES TO GUATEMALA; AND MR. BANCROFT HAS BEEN INSTRUCTED TO MAKE IT KNOWN TO THE BRITISH GOVERNMENT ALSO. YOU MAY ACQUAINT THE MINISTER FOR FOREIGN AFFAIRS OF NEW GRANADA WITH OUR VIEWS ON THIS SUBJECT * * *."¹

Attention should here be called to two things: one, that in the view of Mr. Clayton, the pretension to dominion brought forward by Colombia *embraced only Nicaraguan territory*; and the other that the recognition of sovereignty by virtue of inheritance was made by Mr. Clayton in favor of the adjoining colony, *which was of course Nicaragua*.

- The Government of the United States always maintained, and most tenaciously, in its controversies with Great Britain, that the San Juan River WAS NOT A

¹Wharton's Digest, Vol. III, p. 21.

PART OF THE MOSQUITO TERRITORY. This appears in the note that Mr. Bancroft addressed to the Secretary of State, Mr. Clayton, in August, 1849 (Doc. No. 291), giving an account of an interview with Lord Palmerston, in which, with the despatch of Mr. Clayton in his hand, he gave him very concisely the reasons on which he based the opinion that no such kingdom of Mosquito existed, and that even if it did, ITS JURISDICTION DID NOT REACH TO THE SAN JUAN RIVER.

In a note addressed by Mr. Rives to the Secretary of State, Mr. Clayton, under date of September 25, 1849 (Doc. No. 292), giving an account of another interview had with Lord Palmerston, Mr. Rives states that he informed the latter

“that the Government of the United States, after the most careful investigation, had come undoubtedly to the conclusion that, upon both legal and historical grounds, *the State of Nicaragua* WAS THE TRUE TERRITORIAL SOVEREIGN OF THE SAN JUAN, AS WELL AS OF THE NICARAGUA LAKE; and that it (the Government of the United States) was, therefore, bound to give its countenance and support, by all proper and reasonable means, to rights lawfully derived by their citizens under a GRANT FROM THAT SOVEREIGN.”

In some correspondence exchanged between Lord Palmerston and Mr. Lawrence, the former on November 13, 1849, stated that he was ready, in accord with the Government of the United States, to use his good offices for the settlement of the boundary question between Costa Rica and Nicaragua, because the CORDIAL COOPERATION OF BOTH REPUBLICS WAS ESSENTIAL to

the complete execution of the contemplated enterprise of opening a Ship Canal along the line of the San Juan River and through Lake Nicaragua.¹

(6) OPINION OF MR. ABBOTT LAWRENCE.

No official, or unofficial map among those published, from the era of independence down to the present day, recognized Colombia as having any territorial rights beyond the limits assigned to the Isthmus of Panama on the west or northwest—over the very long stretch of shore that ran from the border of the ancient and well known Province of Veragua as far as Cape Gracias a Dios; and that very fact by itself at once demonstrates the universal belief, unanimously expressed, as against any effort to curtail, for the benefit of Colombia, the territory of the Central American republics above mentioned.

The basis of this observation is not ours; it emanates from the celebrated internationalist and American diplomat, Mr. Abbott Lawrence, who, in a note dated at London on April 19, 1850 (Doc. No. 629), said to the Secretary of State, Mr. Clayton:

"All the good maps of the sixteenth, seventeenth and eighteenth centuries, French, Spanish Dutch and English, carry Honduras from coast to coast; NICARAGUA THE SAME, and fix the southern terminus of the Mosquito shore at or near where I have indicated," i. e., Bluefields.

(7) THE CLAYTON-BULWER TREATY OF 1850 DESTROYS THE NEO-GRANADIAN TERRITORIAL PRETENSIONS.

It is well known that the stipulations of the Clayton-Bulwer Treaty, of April 19, 1850, had as their principal

¹British and Foreign State Papers; Vol. XL, p. 963.

purpose the removal of the difficulties that were encountered in regard to the opening of a ship canal between the Atlantic and the Pacific oceans, by way of the San Juan River and the Lake of Nicaragua, growing out of territorial questions that were discussed between the United States and Great Britain, in defense of the sovereign rights of Honduras, Nicaragua and Costa Rica, over the entire Atlantic littoral from Cape Honduras to the San Juan River, Great Britain, partly in its own name and partly as the protector of the Mosquito King, having secured control of that littoral and the islands included in what was known as the Bay Establishment.

New Granada notified not only the United States, but Great Britain, of her territorial claims over the Mosquito Coast; but they were peremptorily rejected by both of those powers. The Clayton-Bulwer treaty sought to harmonize so far as possible the rights of all the states interested in the territories which it was supposed the canal would cross; and it is worthy of note that the claims of New Granada were treated as having no value whatever.

Even before the rights of Costa Rica and Nicaragua were finally settled by the Cañas-Jerez Treaty of 1858 and by the Award of the President of the United States, delivered in 1888, the opinion was held in the latter country that “* * * *the only sovereign states whose consent and cooperation would, in any event, be necessary for the construction of the Ship Canal contemplated between the two oceans, by way of the River San Juan and Lake Nicaragua, were Nicaragua, Costa Rica, and Honduras.*” This was so expressed by the Secretary of State, Mr. Clayton, in a report sent to President Fillmore on July 18, 1850.¹

¹Ex. Doc. No. 75, H. R., 31st Cong., 1st Sess., Vol. X, p. 5.

(8) THE CENTRAL AMERICAN REPUBLICS RECOGNIZED BY
THE UNITED STATES AS SOVEREIGNS OVER THE
WHOLE OF THE TERRITORY COMPRISED WITHIN
THE OLD CAPTAINCY-GENERAL OF GUATEMALA.

The United States always considered the frontiers of Central America as entirely clear and unquestionable. This appears from the report submitted to the Senate on February 11, 1853 (Doc. No. 601), by Senator Mason of the Committee on Foreign Relations. It said:

"In tracing the history of the Spanish possessions in this part of the American continent, they find that previous to the revolution which severed them from Spain, and for a long time anterior, the territory, which has but recently *assumed* the title of 'Central America,' constituted a separate provincial government, under the name of the 'Kingdom or Viceroyalty of Guatemala.' This Viceroyalty embraced the Provinces of Guatemala, San Salvador, Honduras, Nicaragua and Costa Rica. * * * Thus, geographically, the boundaries of what subsequently became the confederation of 'Central America' are clearly ascertained. *They are those of the old Viceroyalty of Guatemala, and embrace the five Republics named above, with all the insular dependencies which pertained to them whilst under the dominion of Spain.*"

The fact that the city of San Juan de Nicaragua was located within territory that was unquestionably Nicaraguan, was always maintained by the Government of the United States, and some passages will be cited in support of that allegation.

- (9) ADDITIONAL EVIDENCE IN SUPPORT OF THE CONTENTIONS IN SUBDIVISION No. 5. NOTE OF MR. DOBBIN TO COMMODORE HOLLINS. NOTES BY MR. MARCY TO MR. INGERSOLL AND MR. MARCOLETA. MESSAGE OF PRESIDENT PIERCE.

The Secretary of the Navy, J. C. Dobbin, in the instructions given to Commodore George N. Hollins, Commander of the United States ship of war *Cyane*, under date of April 14, 1853 (Doc. No. 602), said:

"Your conduct in affording protection, and saving from destruction the property of that company, is commended not because of any supposed stipulation for that purpose, by convention between Great Britain and the United States, but because American citizens are largely and chiefly interested in said company, the charter of which was granted and guaranteed by the state of Nicaragua, *within the limits of which state the town of San Juan is situated * * ** *San Juan de Nicaragua, or Greytown, is regarded by the UNITED STATES AS WITHIN THE LIMITS OF THE STATE OF NICARAGUA.*"

Referring to a commercial agent appointed by the United States in that city, it is observed that in his commission "SAN JUAN DE NICARAGUA IS EXPRESSLY STATED TO BE WITHIN THE LIMITS OF THE STATE OF NICARAGUA."

The same despatch goes on to say:

"A portion of the property attempted to be destroyed is on Point Arenas. Now Point Arenas is *either a part of Costa Rica or Nicaragua*. If it be within the limits of Costa Rica, it is manifest that the authorities of Greytown IN THE STATE OF NICARAGUA have no right to molest persons or property there. If it be within the limits of Nicaragua, then the authorities of Greytown have no right to interfere, because

the privilege granted by the State Government of Nicaragua prior even to any attempted separate organization at that town."

Referring to this same matter of the jurisdiction of Punta Arenas, which, it is well known, occupies the right bank or southern shore of the bay into which the River San Juan de Nicaragua empties, Mr. Marcy, the Secretary of State, in a note to Mr. Ingersoll, dated June 9, 1853 (Doc. No. 299), wrote as follows:

"If this point of land is within the territorial limits of Nicaragua, as that Republic claims it to be, the right of the Accessory Transit Company can hardly be drawn in question. It is derived from an express grant in their charter from the Government of Nicaragua. If, on the other hand, it is within the territorial limits of Costa Rica, as that State asserts, the Company can retain their possession, as against the people at San Juan, who do not pretend to hold the town of San Juan, or any other property, by grant or permission from the Government of Costa Rica * * *. Punta Arenas, it will be recollected, is on the southern bank of the River San Juan. At the time when the Accessory Transit Company took possession of it, there was *scarcely the foreshadowing of a pretension to a claim for these Indians* [the Mosquitos] *to any territory whatever on the south side of that river.*"

Further along in the same despatch Mr. Marcy said:

"It is proper to say in conclusion, that the President does not authorize me to say in reply to the despatch of Her Britannic Majesty's principal Secretary of State for Foreign Affairs anything which may be construed into a recognition on his part of the claim set up by the people at San Juan to sovereign authority in themselves over any territory whatever, or to any municipal or corporate powers or political organization DEROGATORY TO THE SOVER-

EIGN RIGHTS OF EITHER NICARAGUA OR COSTA RICA; nor does he regard any instructions heretofore issued from this or the Navy Department * * * as sanctioning the pretensions of the people of that place (San Juan) to be considered a *de facto* government, independent of the State WITHIN THE TERRITORIAL LIMITS OF WHICH THE TOWN OF SAN JUAN IS SITUATED."

It will be seen that the United States did not wish to prejudice as to whether the ownership of Punta Arenas was in Costa Rica or Nicaragua, but she did recognize the fact that title to that city resided in one or the other of these republics; and by so doing she positively negatived the contrary and exclusive pretension made by New Granada.

In a note by the Secretary of State, Mr. Marcy, to Señor Marcoleta, Nicaraguan Minister at Washington, dated August 2, 1854 (Doc. No. 605), the following is found:

"Assuming, as it is respectful to do, that you have duly appreciated the consequences of the step you have taken, I infer that the *government of Nicaragua*, by claiming the right of protection over the persons *at San Juan*, will not hesitate to acknowledge her responsibility to other states for the conduct of the people which she has permitted to occupy THAT PART OF HER TERRITORY.

Not a word—not the merest suggestion—betraying regard for or concern in the neo-Granadian claims involving the Mosquito territory from Cape Gracias a Dios toward the Chagres, within which, it was said, were included the port of San Juan, the city of Greytown and the settlement of Punta Arenas! With regard to the

latter point, it was disjunctively affirmed that the ownership was either in Nicaragua or in Costa Rica—but no pronouncement in favor of New Granada; and this was not because the latter nation had been at all negligent in alleging her claims.

The same doctrine was asserted in the Third Annual Message of President Pierce, in 1855 (Doc. No. 606), in which he said :

“It, however, became apparent, at an early day after entering upon the discharge of my present functions, that Great Britain still continued in the exercise or assertion of large authority *in all that part of Central America commonly called the Mosquito Coast, and covering the entire length of the State of Nicaragua and a part of Costa Rica.* * * * All these acts or pretensions of Great Britain, BEING CONTRARY TO THE RIGHTS OF THE STATES OF CENTRAL AMERICA, and to the manifest tenor of her stipulations with the United States, as understood by this Government, have been made the subject of negotiations through the American Minister in London. * * * Yet these pretensions, so without solid foundation in the beginning and thus repeatedly abjured, were at a recent period *revived by Great Britain* AGAINST THE CENTRAL AMERICAN STATES, THE LEGITIMATE SUCCESSORS TO ALL THE ANCIENT JURISDICTION OF SPAIN IN THAT REGION. *They were first applied only to a defined part of the Coast of Nicaragua, afterwards to the whole of its Atlantic Coast, and lastly to a part of the coast of Costa Rica* * * *. ON THE EASTERN COAST OF NICARAGUA AND COSTA RICA the interference of Great Britain, though exerted at one time in the form of military occupation of the port of San Juan del Norte, THEN IN THE PEACEFUL POSSESSION OF THE APPROPRIATE AUTHORITIES OF CENTRAL

AMERICAN STATES, is now presented by her as the rightful exercise of a protectorship over the Mosquito tribe of Indians. * * *"¹

(10) FURTHER EVIDENCE IN SUPPORT OF THE CONTENTIONS IN SUBDIVISION No. 5.

Mr. Marcy, in an official communication addressed to Mr. Dallas, on May 24, 1856 (Doc. No. 607), says among other things:

"Nor is it apprehended that Her Majesty's Government is disposed to claim possession, either in her own name directly, or in that of the Mosquito protectorate, of the port of San Juan de Nicaragua. It cannot but be admitted that that port was an old possession of Spain, her right to which was as indisputable as to Vera Cruz or Panama; that she had a port of entry and a fort at or near that place, so long as she retained the sovereignty of Central America; *and that then her rights of sovereignty there, and of territorial possession, passed to the Republic of Central America.* It is true that, at a subsequent period, and shortly before the date of the treaty now in question, a British force landed at San Juan, *expelled the authorities of the state of Nicaragua, which then held possession of it, and retained it for awhile as against that state, in the name of the Mosquito Indians.*"

In the instructions that Mr. Marcy sent to Mr. Dallas, dated July 26, 1856,² regarding the occupation of the shores of Central America by Great Britain, the following language was used:

"* * * On the other hand, if during that period she [Great Britain] treated *the Central American Republics* as independent states, she was equally bound to respect the territorial sovereignty which,

¹Wharton's Digest, 2d Ed., Vol. III, p. 30.

²Ex. Doc. No. 74, Senate, 58th Cong., 2d Sess., pp. 6-9.

if it did not belong to Spain, *belonged to them*. In either point of view, no part of it could be taken by Great Britain without usurpation of the rights in litigation between Spain and Central America, and appertaining incontestably, either to Spain or *Central America*."

He then added:

"* * * We see, in the first place, that England can have no rights of possession or jurisdiction in *Central America*, except such as her treaties with Spain of 1786 and 1814 accord to her, or except such as she may have acquired by voluntary concession from some one of the republics of *Central America*.
* * *"

In another part of the instructions mentioned, Mr. Marcy writes:

"1. *The Mosquito Indians*.—These persons, it is understood, have no actual occupancy, save in a very limited district, *within the bounds of the undoubted sovereignty of the republic of Nicaragua*.

"2. *San Juan de Nicaragua*.—The questions on this point are somewhat connected in fact with those of the Mosquito Indians, because the original seizure of San Juan was made by Great Britain in the name of, or for, the Mosquito Indians. * * * *But the occupancy of those Indians never in fact reached to San Juan.* * * * Of course the President cannot admit that *the Mosquito Indians* have any rightful connection whatever with *San Juan de Nicaragua*.
* * *"

"There will remain as to *San Juan* the question of limits between Nicaragua and Costa Rica *touching both the river and harbor*, and the future political condition of the port of San Juan. * * * In regard to each of these points, you are instructed to say that the President is prepared to enter into such arrangements as the treaty contemplates, and to employ the

good offices of the United States with the Republics of *Nicaragua and Costa Rica*, in order to accomplish the proposed projects * * *."

On October 17, 1856, the Dallas-Clarendon treaty was signed in London between the United States and Great Britain. The Senate of the United States ratified it, but not without numerous amendments which were set out in the proclamation of President Buchanan, dated March 19, 1857. The purpose of most of these modifications was to guarantee, in an effectual way, the sovereignty and rights of the Republic of Nicaragua over its shores on the Caribbean Sea, from the border of Honduras to the River San Juan de Nicaragua, and at the same time to protect the rights of the Republic of Costa Rica in connection with the river and port of San Juan, and the territory situated to the south of that stream. The government of Her Britannic Majesty accepted without difficulty the amendments offered by the Senate of the United States, in an official communication by Earl Clarendon to Lord Napier dated April 17, 1857.¹

(II) CAÑAS-JEREZ TREATY, 1858.

On April 15, 1858, the Cañas-Jerez treaty was entered into between Costa Rica and Nicaragua for the demarcation of the frontier between the two republics (Doc. No. 312), which provided therefor as follows:

"ARTICLE II. The dividing line between the two Republics, starting from the Northern Sea, *shall begin at the end of Punta de Castilla, at the mouth of the San Juan de Nicaragua River, and shall run along the right bank of the said river up to a point three English miles distant from Castillo Viejo, said distance to be measured*

¹British and Foreign State Papers; Vol. 47, pp. 677, 684, 687 and 690.

*between the exterior works of said castle and the above named point * * **

"ARTICLE IV. *The Bay of San Juan del Norte, as well as the Salinas Bay, shall be common to both Republics * * **

"ARTICLE V. As long as Nicaragua does not recover the full possession of all her rights in the *Port of San Juan del Norte, the use and possession of Punta de Castilla shall be common and equal both for Nicaragua and Costa Rica; * * ** and in the meantime, and as long as this community lasts, the boundary shall be the whole course of the Colorado River. It is furthermore stipulated that, as long as the said Port of San Juan del Norte remains a *free port*, Costa Rica shall not charge Nicaragua any customs duties at Punta de Castilla."

Differences having arisen afterwards between the two republics concerning the validity of that boundary treaty, the matter was submitted to the arbitration of the President of the United States who, by an award delivered on March 22, 1888, declared the compact to be a valid one. Not the slightest notice was taken of the imaginary rights of Colombia over the San Juan River and the Mosquito Coast as far as Cape Gracias a Dios, either in 1858 or in 1888; nor did Colombia herself make any protest of any kind whatever on either of these occasions.

(12) ZELEDÓN-WIKE TREATY OF 1860. DEFINITIVE INCORPORATION OF MOSQUITO IN NICARAGUA.
ALTAMIRANO-HARRISON TREATY.

The Treaty of Managua, of January 28, 1860, generally known as the Zeledón-Wike treaty (Doc. No. 316) entered into by Great Britain and Nicaragua, with the approval of the United States, defined the legal situation of the Mosquito territory. By that instrument the

SOVEREIGNTY OF NICARAGUA WAS LEFT DEFINITELY RECOGNIZED ON THE ATLANTIC LITTORAL FROM THE FRONTIER OF HONDURAS TO THAT OF COSTA RICA, and out of a portion of that littoral a "Reserve" was created for the benefit of the Mosquito Indians, with limits perfectly well defined, UNDER THE SOVEREIGNTY OF NICARAGUA.

From the frontier of Honduras (Cape Gracias a Dios) to the frontier of Costa Rica (the San Juan River) *the whole coast was recognized as being under Nicaraguan sovereignty*, with the absolute and perpetual exclusion of Colombia, who on her part gave her tacit assent thereto by refraining from any protest against the Managua treaty.

The southern boundary of the Mosquito Reserve created by the Treaty of Managua, of 1860, was fixed, as is well known, at the Rama River, a long distance to the north of the River San Juan de Nicaragua, which was approximately on what had been the historical and legal southern border of the Mosquito territory under the Spanish government.

In that treaty the definitive incorporation of the Mosquito Reserve in Nicaragua was provided for, which took effect by a document signed the 20th day of November, 1894. In its main enacting clause the document provided:

"The constitution of Nicaragua and its laws shall be obeyed by the Mosquito people, who shall be under the protection of the flag of the Republic."

This was duly communicated to the Government of the United States, by which it was warmly received; and in pursuance thereof there was concluded between Nicaragua

and Great Britain, on April 19, 1905, what was known as the Altamirano-Harrison Convention (Doc. No. 622), the two principal articles of which provided:

"ARTICLE I. The High Contracting Parties agree that the Treaty of Managua, of January 28, 1860, be abrogated.

"ARTICLE II. His Britannic Majesty RECOGNIZES THE ABSOLUTE SOVEREIGNTY OF NICARAGUA OVER THE TERRITORY THAT FORMED THE OLD MOSQUITO RESERVE, to which the treaty of Managua referred, above cited."

Thenceforward the whole of the Nicaraguan Coast, *from the frontier of Honduras to that of Costa Rica*, was recognized as the undisputed territory of Nicaragua, and fully and unrestrictedly subject to her laws.

Nor did Colombia ever protest against the treaty of 1905, just mentioned, which definitively merged Mosquitia in Nicaragua.

(13) DICKINSON-AYÓN TREATY, 1867.

The Dickinson-Ayón treaty between the United States and Nicaragua was signed June 21, 1867 (Doc. No. 609). By Article 15 it was stipulated that the former should extend its protection to the routes of inter-oceanic communication across Nicaraguan territory, expressly saving Nicaragua's rights of sovereignty and guaranteeing the neutrality and proper use of such routes.

These stipulations were in perfect accord with the doctrine always maintained by the United States, that the coasts of Nicaragua on the Caribbean Sea were the property of that nation and subject to its absolute sovereignty.

(14) NOTE OF MR. FISH TO MR. SCHENCK AND REPORT OF
MR. EVARTS TO PRESIDENT HAYES.

On the 26th of April, 1873 (Doc. No. 611), the Secretary of State, Mr. Fish, wrote to Mr. Schenck as follows:

"For some time previously to the date of that instrument (the Clayton-Bulwer Treaty), * * * it seemed to be the policy of the British Government to avail itself of what was called its protectorate of the King of Mosquitos TO WREST FROM NICARAGUA THAT PART OF ITS TERRITORY claimed on behalf of that Indian chief, INCLUDING, OF COURSE, THE MOUTHS OF THE SAN JUAN RIVER, by the way of which it was supposed the proposed ship canal must pass * * *. On the 28th of January, 1860, a treaty between Great Britain and Nicaragua was signed at Managua. Though this instrument restored to that Republic *the nominal sovereignty over that part of its territory* which had previously been claimed as belonging to the Kingdom of the Mosquitos, it assigned boundaries to the Mosquito Reservation probably beyond the limits which any member of that tribe had ever seen, even when in chase of wild animals."¹

Referring to the stipulations of the Clayton-Bulwer treaty, of 1850 (Doc. No. 596), respecting inter-oceanic communication by way of the San Juan River and the Lake of Nicaragua, Mr. William M. Evarts, Secretary of State, in a report addressed to President Hayes, under date of March 8, 1880, said:

"THESE STIPULATIONS, IT WILL BE OBSERVED, WERE CONFINED TO CENTRAL AMERICA, AND WERE FINALLY CARRIED OUT BY NEGOTIATIONS WITH THE STATES OF CENTRAL AMERICA * * *."²

¹Senate, Ex. Doc. No. 112, 46th Cong., 2d Sess., p. 16.

²Ex. Doc. No. 112, Senate, 46th Cong., 2d Sess., p. 9.

(15) CORRESPONDENCE BETWEEN COLOMBIA, NICARAGUA
AND GUATEMALA, IN 1880 AND 1881, 1890 AND 1896.
MEMORIAL PRESENTED BY DR. DON LORENZO
MONTÚFAR TO THE LEGISLATURE OF GUATEMALA IN
1881.

On June 28, 1880, the Minister of Foreign Relations of Colombia addressed to the foreign office of Nicaragua a despatch (Vol. 2, Doc. No. 366, pp. 397-399) in which, after alluding to the supposititious rights of Colombia over the territorial zone extending along the Atlantic *between the Doraces, or Culebras River and Cape Gracias a Dios*, Nicaragua was invited to take up the matter of the settlement of the boundary question by diplomatic arrangement, and if this should not be feasible, then by an arbitral decision to be rendered by the government of some friendly power designated by mutual agreement.

In the response, thereto, written by Dr. Don Adán Cárdenas, date September 16, 1880 (Vol. 2, Doc. No. 366, pp. 399, 400), the following views were expressed:

"As regards the question to which Your Excellency refers, my Government has not been able to give to it the importance which at first sight its gravity and possible serious character would have, *because it never has been presented by that of Colombia to the consideration of that of Nicaragua*, which does not know in any official way the bases upon which any claim of that character could be supported, *if it were disposed to formally submit it.*

"The rights of *Nicaragua* over the territory which extends on the Atlantic Coast, from *Cape Gracias a Dios* to its frontier with the Republic of *Costa Rica*, have been recognized from a far distant epoch by all the nations with whom it has cultivated friendly relations; its extended possession of that littoral, never disputed by any one, and the exercise of juris-

dictional acts without opposition by any party who might be supposed to have a better right, constitute a title of such clear and unquestionable character that my Government *cannot admit the possibility of it being put in doubt with any color of justice.*"

In a note addressed by Dr. Don Lorenzo Montúfar, Minister of Foreign Relations of Guatemala, to the Minister of Foreign Relations of Nicaragua, on October 16, 1880, (Vol. 2, Doc. No. 366, pp. 401-404) the former said, among other things:

"Now, then, attention is directed to the idea that two of the Central American States have not a foot of land on the Sea of the Antilles, since the limits of *Colombia* reach as far as *Cape Gracias a Dios*, which is situated at 15° north latitude and 83° 10' west longitude from Greenwich.

"According to this, two Central American States *were not part of the Republic of Central America*, nor have they existed as sovereign Republics, since their territory is Colombian.

"Arbitration is very good, very just and very desirable, when it applies to doubtful matters; but that which does not admit of a doubt cannot be submitted to an arbitral decision, because it would be to put into the scale of justice that to which no one sees any objection."

The repudiation by Guatemala of the Colombian pretensions, as to the shores of Costa Rica and Nicaragua on the Carribbean Sea, could not have been more positive.

In view of the correspondence which had been exchanged between the chancelleries of Bogotá and Managua, the Minister of Foreign Relations of Guatemala, in the memorial laid by him before the legislature in the year 1881 (Doc. No. 366), treated at length this question that had been brought up by Colombia; in that paper occur the following passages:

"The Government of *Colombia* addressed to the Nicaraguan Government a note proposing an arbitration *as to boundaries*.

"*Nicaragua* did not accede to this, because *not bordering on Colombia*, there could not be any territorial questions between the two countries.

"Between *Nicaragua* and *Colombia* there can be no question *as to boundaries*, because the two countries are separated by an intermediate space.

"This intermediate space is the whole territory of *Costa Rica*."

"It is not possible, therefore, to imagine that there could be submitted to arbitral decision any matter relating to boundaries between *Nicaragua* and the *United Colombian States*, and for that reason the reply was made to their Government which is now presented to you."

In a note addressed by Dr. Don Benjamín Guerra, Minister of Foreign Relations of Nicaragua, to the Foreign Minister of Colombia, on June 26, 1890,¹ in response to claims set up by the latter growing out of the contract Nicaragua had entered into for the purpose of securing inter-oceanic canalization by that route, the following passages occur:

"The Government of this Republic *never has recognized, nor does it recognize that it [the Republic of Colombia] has any rights of sovereignty over the territory referred to of the Mosquito Coast*. Those rights *belong exclusively to Nicaragua*, under unquestionable titles, of which it is in possession and which never have up to this time been disputed.

"*Nicaragua is the sole sovereign of the zone that extends, upon the Atlantic side, from Honduras on the north to Costa Rica on the south, and it is worth while*

¹ Report of the Minister of Foreign Relations of Colombia to the Congress of 1896, pp. 189, 190.

to quote here what was said by Doctor Don Adán Cárdenas, the Minister of Foreign Relations of this Republic, in his despatch of September 16, 1880, answering the one cited by Señor Rico. The rights of Nicaragua over the territory mentioned '* * * have been recognized from a far distant epoch by all the nations with whom it has cultivated friendly relations; its extended possession of that littoral, never disputed by any one, and the exercise of jurisdictional acts without opposition by any party who might be supposed to have a better right, constitute a title of such clear and unquestionable character that my Government cannot admit the possibility of its being put in doubt with any color of justice.'

"The Government of Nicaragua, persisting in these same convictions, must declare that, in ceding some of its territorial rights to the American corporation with whom it treated for the excavation of an inter-oceanic canal, it did nothing that was prejudicial to those of the Government of Your Excellency, for the very clear reason that *Colombia does not have the sovereignty which it claims* over the territory called the Mosquito Coast.

"It is very satisfactory to the Government of Nicaragua that its characteristic equity is recognized and the undeviating friendship it has cordially cultivated with that of your republic, and you may be assured that, inspired by those same sentiments, it has determined to make this response, which it is hoped may be favorably received by the illustrious Government of Your Excellency."

On March 14, 1896,¹ the Minister of Foreign Relations of Nicaragua, Dr. Don José Dolores Gámez, in a note he addressed to the foreign official of Colombia, expressed the following views:

¹*Ibid.*, p. 197.

"My Government, Mr. Minister, does not believe that any question can be raised as to the possession and the exercise of sovereignty which, without contradiction by any one, it has exercised and is exercising over the land referred to by Your Excellency. On the 16th of September, 1880, already, there was given to the Government of Your Excellency, by my predecessor in this Ministry, Señor Doctor Don Adán Cárdenas, a copy of the response to which is herewith enclosed, and it is my understanding that from that time to the present not only has there been no change in the rights of Nicaragua, but they have rather been made more effective and have been recognized without opposition.

"There existing, then, no question whatever between Nicaragua and Colombia, the arbitration proposed by Your Excellency is entirely lacking in any object."

16. NOTE OF MR. GRESHAM TO MR. BAKER, 1894.

In the note addressed by the Secretary of State, Hon. Walter Q. Gresham, to Mr. Baker, Minister to Nicaragua, on June 13, 1894 (Doc. No. 614), he said:

"The President is unable to sanction any intervention by you restrictive of the sovereign authority of Nicaragua over the territory occupied by the Mosquito Indians. RECOGNIZING, AS THIS GOVERNMENT DOES, THE PARAMOUNT RIGHTS OF THE REPUBLIC IN THAT REGION, IT ILL BECOMES THE REPRESENTATIVE OF THE UNITED STATES TO INTERFERE TO RESTRAIN THE NICARAGUAN GOVERNMENT IN THE EXERCISE OF THOSE SOVEREIGN RIGHTS.

"Your proper function is limited to the protection of American citizens in the reserve, AS IN ANY OTHER PART OF THE NICARAGUAN TERRITORY.

You will, before now, have received, if indeed you had not already received at the time of writing your despatch of May 30, my instructions of May 12, enjoining you to REFRAIN FROM DOING OR SAYING ANYTHING TENDING TO DISPARAGE NICARAGUA'S PARAMOUNT SOVEREIGNTY, OR TO ENCOURAGE PRETENSIONS TO RIGHTS INCONSISTENT THEREWITH."

There could not be a more categorical condemnation of the remarkable Colombian claims to the sovereignty of the Mosquito Coast.

(17) AWARD BY THE KING OF SPAIN IN THE BOUNDARY LITIGATION BETWEEN HONDURAS AND NICARAGUA, OF 1906.

On December 23, 1906, His Majesty the King of Spain rendered the Award that put an end to the boundary question between the republics of Honduras and Nicaragua (Doc. No. 437); among the considerations upon which the decision was based there appeared the following:

(a) Each republic was the owner of the territory which, *at the date of its independence from Spain, constituted, respectively, the Provinces of Honduras and Nicaragua.*

(b) Honduras demonstrated by numerous documents that before and after 1791 the Government-Intendancy of Comayagua intervened in everything that belonged *to its jurisdiction* in Trujillo, Rio Tinto and *Gracias a Dios*.

(c) The Bishopric of Honduras which, before 1791, had already performed acts of jurisdiction in territories now disputed, continued to exercise such jurisdiction in an unquestioned manner from that year forward, in the demarcation of the government-intendancy of the same name, in the disposition of titles, the granting of marriage licenses, the appointment of curates, and in hearing

the claims of ecclesiastics at Trujillo, Rio Tinto and *Cape Gracias a Dios*.

(d) The establishment of *Gracias a Dios*, from the period prior to 1791, was included in the Bishopric of Honduras and continued under that jurisdiction until the aforesaid Spanish province became an independent state.

(e) *Gracias a Dios*, with Choluteca and other settlements took part in the election of the Provincial Deputation of Honduras held on the 6th of November, 1820.

(f) *Cape Gracias a Dios* marked what was practically the end of the extension of the conquest of Nicaragua toward the north, and of Honduras toward the south.

For those and other considerations, which were set forth in the decision, there was fixed therein, as the extreme point of the boundary between the contending parties on the Atlantic Coast, the mouth of the Coco, Segovia or Wanks River, very near *Cape Gracias a Dios*, and the minutely described line that proceeded from thence to its terminus at Portillo de Teotecacinte.

(18) CONCLUSIONS.

For the sake of brevity, attention will be called to certain important facts only, such as the treaty by which Spain recognized the independence of Nicaragua in 1850, wherein it appeared that the territory of the new republic was the same which belonged to the old *Province of Nicaragua* under the colonial régime, and which extended from sea to sea; the Award of the Emperor of Austria (Doc. No. 365) rendered in the litigation between Great Britain and Nicaragua, in which, with very great precision the extent of the rights of sovereignty over the Mosquito Coast was defined in conformity with the Convention of January 28, 1860, known as the Zeledón-Wike treaty; the Crampton-

Webster, the Cass-Irizarri, the Fish-Cárdenas, the Zavala-Frelinghuysen treaties; the commercial treaties entered into by Nicaragua, France and other Powers with respect to inter-oceanic communication by way of the River San Juan and Lake Nicaragua; the contracts relating to inter-oceanic canalization made by Nicaragua and Costa Rica with Mr. Félix Belly and the company of Paris and many others entered into by Nicaragua separately; all documents in which Nicaragua undertook to stipulate for, and to grant—sometimes by herself alone and sometimes in association with Costa Rica—the respective concessions, the former being the owner of the territories across which it was proposed to make the excavations for such canal.

The mass of evidence produced in this statement is of such overwhelming weight that very little importance can be attached to the fundamental purpose of Colombia, which was to intervene as an essential party and one that could not be disregarded in the negotiations concerning communication between the two oceans through Central American territory. It was formulated for the first time by its Minister of Foreign Relations, Señor J. Revenga, on October 19, 1825; and on January 7, 1839, General Don Pedro Alcántara Herrán, Minister of Foreign Relations of New Granada, reproduced it in a communication addressed by him to the Federal Government of Central America—then in fact already extinct—in the following words:

“If it is undertaken to carry out the projected inter-oceanic communication through the mouths of the River San Juan, the Government of New Granada will oppose it, making use for that purpose of whatever means may be permitted by international law.”

That law, as a matter of fact, did not lend its support to the pretensions set up to exclude the Central American

republics bordering on the San Juan River from a matter so peculiarly their own as was the projected Nicaragua canal, and the intimation of General Herrán was left without any effect whatever.

Another object that Colombian diplomacy always had in view in the Mosquito question, was to obtain, under cover of that interest, special advantages in the definition of its boundaries with Costa Rica. This was very clearly acknowledged by Señor José T. Gaibrois, in a paper prepared by him at the direction of the Colombian government, dated June 30, 1896, and submitted to the Ministry of Foreign Relations, under title "*Límites entre Colombia y Nicaragua—Costa de Mosquitos*" (Boundaries between Colombia and Nicaragua—Mosquito Coast). Referring therein to a communication from the Chancellery of Bogotá, addressed to that of Managua, on the 4th of February, 1848, he said:

"This would have been a propitious occasion to settle, one after the other, if not at the same time, our old questions of frontiers in Central America, *the Mosquito Coast claim then being, as it has always been, subordinated by our Chancellery to the settlement of the dispute with Costa Rica.* * * *"

(19) THE LOUBET AWARD.

In conclusion attention is directed to the Award of President Loubet which in express terms decides that the territory of Panama shall not extend beyond Punta Mona on the Atlantic Coast, and that islands in proximity to the coast "situated to the west and to the northwest of the said Punta Mona shall belong to the Republic of Costa Rica." The award also in express terms refers to other islands "more distant from the continent and included

between the Coast of the Mosquitos and the Coast of the Isthmus of Panama."

It is evident, therefore, that it was the intention of President Loubet in his Award to decide that Costa Rican Territory intervened along the Atlantic littoral *between* the Mosquito Coast and Panama, thus denying Colombia's claim that the Mosquito Coast extended south of the San Juan River or intervened between Costa Rica and the sea along any part of the littoral south of the Nicaraguan boundary.

ANNEX IV.

INEFFICACY OF THE ROYAL ORDER OF SAN LORENZO, DATED NOVEMBER 20, 30, 1803.

I. OBJECTIONS ADVANCED BY BRIGADIER DON ROQUE ABARCA.

- (1) THE COSTAN RICAN LITTORAL ON THE ATLANTIC WAS NOT INCLUDED IN THE ROYAL ORDER. THAT ORDER WAS NEVER EXECUTED.
- (2) REASONS GIVEN BY ABARCA IN OPPOSITION TO THE COLONIZATION PLAN THAT SERVED AS THE BASIS FOR THE ROYAL ORDER.
- (3) PRESIDENT GONZÁLEZ ADOPTS THE OBJECTIONS OF BRIGADIER ABARCA.
- (4) FURTHER ROYAL ORDER CONCERNING THE COLONIZATION OF THE MOSQUITO COAST—TWIN TO THE ORDER ABOVE CITED.
- (5) ANALYSIS OF THE COLONIZATION PLAN.
- (6) NO PART OF THE COLONIZATION WAS EVER CARRIED OUT, OR EVEN INITIATED.
- (7) STATEMENT OF FACTS SHOWING THAT FROM 1803 TO 1821 NEITHER THE MOSQUITO COAST OR THE MATINA COAST WERE SEPARATED FROM THE CAPTAINCY-GENERAL OF GUATEMALA AND THE PROVINCES AND BISHOPRIC OF NICARAGUA AND COSTA RICA.
- (8) RÉSUMÉ OF THE DATA EMBRACED IN THE FOREGOING STATEMENT OF THE FACTS PERTAINING TO THE PERIOD BETWEEN 1804 AND 1821.
- (9) THE MATINA COAST. INCONTESTABLE PROOFS OF COSTA RICA'S CONTINUOUS POSSESSION. THE MILITARY DETACHMENT AT MATINA.

I. OBJECTIONS ADVANCED BY BRIGADIER DON ROQUE ABARCA.

The Royal Order of San Lorenzo of November 20-30, 1803 (Doc. No. 192), was the subject of serious objections, formulated by the Inspector of Militia of the Captaincy-General of Guatemala, Brigadier Don Roque Abarca, in a communication submitted by him to the President of the Royal Audiencia and Captain-General, Don Antonio González, who adopted in all their parts the observations of his immediate subordinate, and transmitted them in his turn to the Universal Ministry of the Indies.

(1) THE COSTA RICAN LITTORAL ON THE ATLANTIC WAS NOT INCLUDED IN THE ROYAL ORDER. THAT ORDER WAS NEVER EXECUTED.

Señor Abarca began his note (Doc. No. 194) by defining the territory directed to be separated from the Captaincy-General of Guatemala and added to the Viceroyalty of Santa Fe; and it was understood therein to be confined to the Island of San Andrés, Gracias a Dios, Bluefields, and, to a certain extent, the San Juan River—nothing more. The territory belonging to the northern coast of the Province of Costa Rica was, therefore, left outside of and unaffected by the contemplated segregation and annexation.

(2) REASONS GIVEN BY ABARCA IN OPPOSITION TO THE COLONIZATION PLAN THAT SERVED AS THE BASIS FOR THE ROYAL ORDER.

The attack which Brigadier Abarca made on the plan of Governor Don Tomás O'Neill—which was adopted by the Board of Fortifications and Defense of the Indies and served as a basis for the Royal order of November 20, 1803, was rude, formidable, extremely apt, fully justifiable and as eloquent as it was sincere.

The Board of Fortifications and Defense of the Indies, and the Department of War itself, in view of the wise and courageous report of Don Roque Abarca, could not fail to understand that they had committed a very serious mistake in issuing the important measure objected to; and although there has not been found in the Spanish archives any direct and specific order revoking except by implication the Royal order of November 20, 1803, neither does there appear in those archives, or in those of Guatemala and Costa Rica, any paper indicating that the purpose of carrying out the plan of segregation and addition was persisted in; on the contrary there is an abundance of data leading with irreproachable logic to the fixed conviction that that Royal order was never put into execution in any form—that its execution was never even initiated; that things remained in the same status in which they were found prior to the issuance of that order, all of which is in accord with the basic idea of the report of Señor Abarca, whose conclusion was that—"serious injuries will result if this plan is carried out, and even if an attempt be made to realize it; and * * * that even if it were desirable to carry it out, its execution should not be entrusted to O'Neille."¹

O'Neille, in the view of Abarca—seconded by the President and Captain-General—was actuated solely by the purpose of carrying on contraband traffic, on a great scale and for his own profit, in the Kingdom of Guatemala. In order to succeed in his desires, O'Neille made allegations that were evidently false and entirely lacking in truth, without attempting to excuse himself by ignorance, although he must surely have been aware of the falsity

¹Documents annexed to the Argument of Costa Rica, Doc. No. 194, Vol. I, p. 642.

of his assertions. This is shown by papers in the handwriting of O'Neill, in the possession of Abarca, who put the same in the hands of President González, in order that they might be forwarded to Madrid. The Plan of O'Neill had been previously proposed in another form to Abarca, who had indignantly rejected it. It was then submitted to President González, and he also rejected it; whereupon O'Neill resorted to the expedient of the separation of the Mosquito Coast from the Captaincy-General of Guatemala, as being the only means whereby he could succeed in his illicit purposes. The colonization of the Mosquito Coast, as proposed by O'Neill, was impracticable except for purposes of contraband trade. Only lunatics or contraband traders would follow the plan of the Governor of San Andrés. The plan that should be followed for the colonization of Mosquitos was altogether different, and was proposed by Abarca; his scheme was slow, but sure. O'Neill was deceitful and false, and a great smuggler.

(3) PRESIDENT GONZÁLEZ ADOPTS THE OBJECTIONS OF
BRIGADIER ABARCA.

President González, as before stated, adopted the very serious criticisms of his immediate subordinate, as may be seen in his despatch of June 3, 1804, addressed to the Secretary of War (Doc. No. 195). In it Señor González says that, in order to consider the representations of Abarca he has *taken up and examined the documents cited and carefully investigated the observations of Abarca, which he finds entirely in harmony with the facts ascertained in other ways and with the opinion he himself has formed of O'Neill.* He adds that it is borne in on him with peculiar force that *the work of Abarca rings true*, wherein it seeks to

show that what O'Neill is in pursuit of is smuggling, on account of which during the recent war, he had had to refuse him the means of defense which he had asked for and which had been destined for him while outside of the Island of San Andrés, where his government was located. President González goes on to state to the Ministry of War the *general belief that O'Neill was responsible for the illicit commerce with Jamaica* and that that commerce was extended to the Kingdoms of Guatemala and New Granada. He refers to a pending suit which grew out of *some enormous smuggling operations on the San Juan River*, conducted in connection with a depot on the Island of San Andrés; and he ends by saying that the PROPOSED segregation of territory would be a great help to him (Señor González), and that with the purest intentions he presents the facts stated with the desire for better service and in order that the Ministry may make whatever use it sees fit of the data given.

Much less would have been needed than the report of Abarca, supported by the Captain-General of the Kingdom, to discredit entirely at Madrid the Royal order of 1803; so that it is not at all surprising that nothing—absolutely nothing—was to be done in the way of its fulfillment and that matters were left in their former status.

(4) FURTHER ROYAL ORDER CONCERNING THE COLONIZATION OF THE MOSQUITO COAST—TWIN TO THE ORDER ABOVE CITED.

It is to be noted, further, that this order of San Lorenzo is in effect a duplication of the other order of the same date (Doc. No. 191). In this second order the Captain-General of Guatemala was informed that the Board of Fortifications and Defense, in the reports of September

2, and October 21, 1803, express its opinion regarding the progress, settlement and defense of the Islands of San Andrés, as well as concerning its segregation, together with that part of the Mosquito Coast which extends from Cape Gracias a Dios, inclusive, toward the Chagres River, from that captaincy-general in order to incorporate it in the New Kingdom of Granada; and that the views of the Board having been accepted, copies of the said opinions were sent to the Captain-General of Guatemala for his information and execution in so far as it concerned him. In like manner copies of the said opinions were sent to the Viceroy of Santa Fe, also for his information and execution.

Therefore, the Royal order for the segregation of part of the Mosquito Coast and its aggregation to the Viceroyalty of Santa Fe was not made in an isolated way, but in union and concert with the other twin Royal order, of the same date, by virtue of which it was commanded that there be put in execution, *in all its parts*, the plan conceived by the Board of Fortifications and Defense of the Indies, *fully set out* in the two reports of September 2 and October 21, above cited, and transcribed and forwarded by the Minister of War to both the Captain-General of Guatemala and the Viceroy of Santa Fe for fulfilment.

(5) ANALYSIS OF THE COLONIZATION PLAN.

It is necessary, therefore, to analyze the plan stated by the Board of Fortifications and Defense of the Indies in pursuance of the segregation and addition of a part of the Mosquito Coast which had been resolved by the Department of War. The complete text of these two opinions is to be found in Docs. Nos. 189 and 190; from them the following points are taken:

(a) The desirability of keeping Don Tomás O'Neill in his position as Governor of the Island of San Andrés, with the annual salary of two thousand pesos.

(b) That the geographical position of the Island of San Andrés makes it an excellent stopping place and strategic point for the maintenance and support of the establishments on the desert Mosquito Coast—a point which in the course of time would afford similar help to the settlements which the Board purposed to reestablish at *Cape Gracias a Dios* and *the Bay of Bluefields*.

(c) That for this to have the best and most prompt effect, it is desirable that *these establishments*, as far as Cape Gracias a Dios, inclusive, and the Island of San Andrés, should depend upon the Viceroyalty of Santa Fe in such a manner that the governor of said islands might address himself directly to the Commandant of Cartagena in requesting the things he might need.

(d) The desirability of making the suggested establishments on the Mosquito Coast depend upon the Viceroyalty of Santa Fe, the fact not being considered as an obstacle that there remained subordinate to Guatemala the guard of a corporal and four men at the mouth of the San Juan River, as being an advance or outpost of the Castle of San Carlos, situated on that river, before arriving at Lake of Nicaragua.

(e) The utility of settling that Coast, improving its establishments from Cartagena without expense to the Royal treasury, and securing voluntary colonization by persons who were acclimated to those countries and attracted thereto by the free commerce that would be granted to them.

(f) A definite plan for the colonization of *Cape Gracias a Dios* and *the Bay of Bluefields*, without requiring export

duties to be paid on produce, nor limiting the colonists to points fixed beforehand, in order that that desert coast might be settled with His Majesty's vassals who should enjoy free trade among themselves and with the Indians.

(g) The convenience of entrusting to the Governor of San Andrés (O'Neill) the immediate command of *the establishments* in the proposed colonizations at *Gracias a Dios*, *Bluefields* and *San Juan*, with the authority to give possession of the lands therein to the residents of that island and of other countries who voluntarily desired to go and establish themselves on that Coast; and in case that as many as twenty persons united together the Bishop of Cartagena was to appoint a friar or priest, who after forming a provisional church, could attend to their spiritual needs and assist with discreet zeal and great kindness in gaining the hearts of the roving natives. These residents were to be provided with guns and munitions in order for defense against unforeseen attacks by the Indians, in such amount as O'Neill should prudently regulate, and the same as to the residents (if any) who voluntarily remained at Cape Gracias a Dios. *Such establishments* were to be considered as tentative, without expense and practically without cost to the Royal treasury, so that the undertaking could never, even if it did not succeed, be any detriment to the state; whereas, if great advantage resulted it would redound throughout its whole extent.

(h) That these regions, being entirely occupied by the Mosquito Indians, without whose consent communication was impossible with that coast by land—at the time uninhabited and desert—and their settlers could not obtain any help from Guatemala, even though that government might come to the point of taking note of their needs; so that by adding them to the Viceroyalty of Santa Fe there

would in reality be no segregation from the Government of Guatemala, with the exception of the few inhabitants who might be at Cape Gracias a Dios—and therefore no injury would be caused to that Kingdom.

(i) And lastly, the Governor of San Andrés would not have command of the advance guard of the Castle of San Carlos on the San Juan, with whose Governor alone the former would have to deal.

These are the most important points of the board's two opinions; the plan developed, appearing to have been approved, it was ordered to be carried out, as above stated.

(6) NO PART OF THE COLONIZATION WAS EVER CARRIED OUT, OR EVEN INITIATED.

But the said plan having been objected to with the energy and weight above noted, no disposition looking to its practical execution was made, either by the Department of War, or by the President of Guatemala, or by the Viceroy of Santa Fe, or by Governor O'Neill, or anyone else; wherefore:

(a) *The civil and political command of the desert Mosquito Coast was never conferred upon the Governor of the Island of San Andrés, Don Tomás O'Neill.*

(b) *Nor was any disposition ever adopted—either by the mother country, or by the viceroy, or by the Governor of San Andrés—for the foundation of the proposed new establishments of Gracias a Dios, Bluefields and San Juan.*

(c) *The dependency of the Mosquito Coast upon the Viceroy of Santa Fe never passed beyond the stage of a mere idea written in the Royal order of 1803; it was without any visible practical effect—doubtless in a great measure because it became necessary for the Spanish authorities of the Island of San Andrés to evacuate the*

island in 1806, and because of the insurrection that afterwards took place, in 1810, throughout the greater part of the Viceroyalty of Santa Fe.

(d) The *voluntary colonization* of the desert Mosquito Coast, so much desired by the Court and so impracticable in the opinion of Señor Abarca, *did not materialize*, nor was any attempt made to carry it into execution; neither was the commission *to distribute lands* conferred upon O'Neill; nor were the twenty residents mentioned ever gathered together; nor did the Bishop of Cartagena ever have the opportunity of directing a friar to care for the spiritual welfare of any of them or assist in the teaching of the natives; nor was any provision made for guns and munitions for defense against attacks—the entire plan remained on paper only; in fact, the objection prepared by Abarca was fully justified.

A more complete breakdown has never been recorded in the history of Spanish America.

Instead of the Island of San Andrés being converted into a stopping point and a support for the establishments on the Mosquito Coast planned for *Gracias a Dios*, *Bluefields* and *San Juan*, it fell soon afterwards into the hands of the enemy; and then Cartagena and the viceroyalty entered upon the revolutionary period that led to independence.

Subsequent developments having made the preparation of any express repeal unnecessary, the Court of Madrid issued later on other provisions relating to the government and administration of the territory in question, each of which presupposed the invalidity of the ill-advised and unfortunate Royal order of November 20, 1803.

It will be opportune now to consider in some detail these numerous provisions, which, taking as a fact the

non-existence of the unfulfilled Royal order of November 20, 1803, served as a guide for the government of the Mosquito Coast, from the beginning of 1804 until the sovereignty of Spain was extinguished therein.

- (7) STATEMENT OF FACTS SHOWING THAT FROM 1803 TO 1821 NEITHER THE MOSQUITO COAST OR THE MATINA COAST WERE SEPARATED FROM THE CAPTAINCY-GENERAL OF GUATEMALA AND THE PROVINCES AND BISHOPRIC OF NICARAGUA AND COSTA RICA.

THE YEAR 1804.

The public documents belonging to this year, in which the facts above stated appear, are very numerous; some of them will be cited.

On April 19, the Viceroy of Santa Fe, Don Antonio Amar,¹ addressed a communication to the Minister Don Miguel Cayetano Soler; therein he acknowledges being informed of the Royal order of the 10th of the previous September which Señor Soler had transcribed for him. In that order the Viceroy is notified that, for the protection and security of the Mosquito Coast, he may assist the marine commandant of the Cartagena station with the men and necessary supplies for the purchase and complete equipment of the two coast-guard vessels destined for that cruising station. With this in mind the Viceroy calls attention to the excessive cost entailed by the few and small vessels or privateers of Cartagena, the amount of which cost, he said, was constantly increasing and would be augmented by the addition of the two vessels proposed, the lack and dearness of the needed supplies which had to be purchased in Spain and sent out

¹Peralta, *Costa Rica y Costa de Mosquitos*, etc., p. 436.

when opportunity offered, along with orders for articles of specific equipment.

This document demonstrates two things: first, that at its date (April 19, 1804) the Viceroy Amar had not yet received the communication of the Royal order of November 20, 1803, and, perhaps for that reason, he did not show a very favorable disposition towards the expenses—which were not small—required for guarding the Mosquito Coast; and second, that the order to maintain such guard and its expense, issued September 10, 1803, was independent of the Royal order of November 20, of the same year, which provided for the segregation of a part of that Coast from the Captaincy-General of Guatemala and its aggregation to the Viceroyalty of Santa Fe.

But, as a result of the events that occurred during that period, the purchase and equipment of the two coast-guard vessels for the protection and security of the Mosquito Coast was not made; nor was the idea and arrangement carried through for the segregation of part of that coast from the captaincy-general and its aggregation to the viceroyalty, as will be shown during the course of this statement.

Don Antonio González was Captain-General of Guatemala, and on the 3d of November, 1804¹—almost a year after the issue of the famous Royal order of San Lorenzo—he addressed himself to the Secretary of War in regard to the defense of Trujillo and the rest of the ports of the Mosquito Coast. The next to the last paragraph of that long communication refers to the construction of the Castle of San Juan de Nicaragua, in which, at its inception two engineers were engaged. The Captaincy-General of Guatemala, then, had under its command, and in its care,

¹*Ibid.*, p. 438.

the Port of San Juan de Nicaragua, and was prepared to execute therein a work of great importance and heavy cost—a status of things which, of course, would have been impossible, if that port, on the 3d of November, 1804, had been subject to the command of the Viceroy of Santa Fe, in conformity with what had been determined by the much heralded Royal order of San Lorenzo—acknowledged but not executed.

Some merchants of León de Nicaragua, fearing that two merchant vessels which were expected to arrive, with cargoes belonging to them, at the mouth of the San Juan River, might be attacked by the Mosquito Indians, asked the Governor Intendant of Nicaragua, Brigadier Don José Salvador, to take steps to protect their interests. The governor intendant called together the Provincial Board of War and that body resolved to despatch to the mouth of the river a troop composed of seventy-five men, three officers and sixteen artillerymen, with four cannon; later the new War Board decided to increase the detachment at the mouth of the river by fifty more men. In all this there was no reference to the action of the Viceroy of Santa Fe, which would have been the case if the Royal order of San Lorenzo had been carried out. The one to whom Brigadier Salvador applied was his immediate superior in matters of war, the Captain-General of Guatemala; and that functionary, after having previously consulted with the Brigadier, Sub-Inspector General Don Roque Abarca, resolved to disapprove the measures taken by the Governor Intendant of Nicaragua, for the powerful reasons set out in his communication from which this data is taken, and he also directed that the forces be withdrawn from the mouth of the river.

Later the Tribunal of Accounts of Guatemala intervened in the matter.

In the communication which the Captain General addressed to the Minister of War¹ in regard to this matter, he recommended that the Intendant Salvador be cautioned to be more circumspect in connection with his dispositions for the movement of troops and to consult the Captaincy-General if the matter is not of an imperative and urgent nature.

Not a single word is to be found in that communication, indicating that the Captain-General of Guatemala harbored the slightest doubt as to his jurisdiction in matters relating to war in the Province of Nicaragua, including its port on the Atlantic, that is to say, the mouth of the San Juan River—a conclusion which cannot be reconciled with the validity of the Royal order of San Lorenzo.

In the same year of 1804, two Royal orders issued, on November 20 and 28,² by advice of the Board of Fortifications and Defense of the Indies, commanded that from the financial offices in Mexico there be sent directly to the Kingdom of Guatemala one hundred thousand pesos per annum, for the establishments on the Mosquito Coast. It is well known that the establishments of the Mosquito Coast were four in number, to-wit: *Trujillo*, *Rio Tinto*, *Gracias a Dios*, and *Bluefields*, as will be seen by authentic documents, of which a detailed account will hereafter be given.

It is clear that if the Royal order of San Lorenzo, of November 20, 1803, had been held to be in force in the following year of 1804, there would not have been placed at the disposition of Guatemala the enormous amount which was directed to be remitted from Mexico for the

¹*Ibid.*, p. 447.

²*Ibid.*, p. 455.

establishments of the whole Mosquito Coast, two of which (Gracias a Dios and Bluefields) would in such case have been in the care and under the orders of the Viceroy of Santa Fe.

On the 28th of February, 1804, the King of Spain approved the instruction that the Captain-General of Guatemala had prepared, in order to prevent frauds in the traffic permitted by the River San Juan de Nicaragua and in order to avoid the extortions which the commerce suffered by the dilatory and useless custom of visiting the vessels that arrived; this appears from the Royal order of the same date.¹ Therefore the Superior Authority of Guatemala regulated the commerce of the San Juan River, which was an administrative act, clearly incompatible with the subsistence of the Royal order of San Lorenzo.

On the 8th of August, 1804, there was issued a Royal order² in which the appointment (resolved by the Superior Junta of Hacienda of Guatemala) of a customs house officer for the Port of San Juan de Nicaragua was approved, with an annual appropriation of \$200. It is evident that the Superior Junta of Hacienda of Guatemala, if the Royal order of San Lorenzo was in force, would have been invading a foreign jurisdiction by that appointment, and the government of the mother country would have severely punished such invasions instead of approving the appointment as was done.

On June 21, 1804, the Secretary of State and of the Universal Department of Hacienda directed the President of Guatemala to prepare a report concerning navigation and commerce on the River San Juan de Nicaragua. It appeared from that report³ that there was no easy way

¹Peralta, *Costa Rica y Colombia*, p. 299.

²Peralta, *Costa Rica y Costa de Mosquitos*, p. 432.

³Peralta, *Costa Rica y Colombia*, p. 299.

of promoting such navigation, or of settling or improving the river; all of which, though practicable would be very expensive, in an uncultivated country, as unhealthful as it was fertile. The report adds that the only method then presented itself was by increasing the clearing and cultivation of that region and by granting the same favors that were conceded in a Royal order of November 20, 1803 (Doc. No. 474), to the new settlers *of the territory of Mosquitos*. A total exemption from duties and tithes of one-tenth for ten or twenty years on the products gathered within a distance of from five to ten leagues from the river, on either bank would produce the effect of converting into cultivated lands those not in use—even for pastures. If the banks were cultivated and settled, the district would become more healthful.

From this document two conclusions may be drawn: first, that the Superior Authority of Guatemala held jurisdiction over the River San Juan; and second, that the territory of San Juan was not comprised within the Mosquito Territory. Otherwise it would have been idle to discuss means for improvement by an exemption of duties for ten or twenty years for products raised on the banks of the river, since that exemption had already been granted for the Mosquito territory.

In the same communication from the President of Guatemala to the Universal Secretary of Hacienda, the former refers to complaints that he has received concerning illicit trade on the San Juan River and of prosecutions for smuggling, also to the efforts made to prevent it. He also refers to the encouragement that commerce has had from the prompt observance of the instruction prepared by him and approved by Royal order, to which the President had contributed not a little by giving an impulse to the

navigation under consideration. All of this reveals, in a very evident way, the inefficacy of the Royal order of San Lorenzo in so far as it affected the River San Juan de Nicaragua, at a period so near its date that it could not have been involuntarily or unwittingly overlooked by the minister and the high functionaries of the colonies, always zealous in guarding their own legitimate rights.

THE YEAR 1805.

On the 18th of June of this year the President of Guatemala addressed to the Secretary of the Universal Department of Hacienda a communication¹ which also concerned the navigation of the San Juan River and the settlements on its banks. It shows the contrast between the pretensions to the commerce made by the Province of Nicaragua (for it evinces the desire that the Port of San Juan should be the best in the Kingdom), and the commerce of the capital (Guatemala), which was opposed to its opening and asked that no traffic be permitted by it except that which was carried on directly with Spain. Between these extreme views the President took a middle course. He sustained the opening, with a total exemption from duties on the exportation of fruits and products of the country and on the import of all articles manufactured in the Peninsula; but he wished to charge foreign goods, whatever their kind or origin, and force them to the tax of 4 per cent, or at least a half of it. He referred then to the fortification of the Port of San Juan, but he called attention to the fact that it should not be lost sight of that, for the Royal treasury this would be a new very heavy charge, that the Public Treasury was pledged for five millions and that no permanent expense should be considered without arranging for a means to meet it.

¹Peralta, *Costa Rica y Costa de Mosquitos*, p. 459.

Such is, without a doubt, the language which the Captain-General of Guatemala would use, with full jurisdiction and in complete exercise of it, over the territory of the San Juan; and it could not have occurred to any one that the official mentioned would have so expressed himself if the Royal order of San Lorenzo had been in force at that time and was being observed.

On the 18th of December, 1805¹, the same President of Guatemala, in a despatch directed to the Universal Secretary of Hacienda, forwarded a statement of the vessels, products and articles which came in and went out from the Port of San Juan de Nicaragua during the first six months of the year. An accompanying table contained all the necessary data concerning the character of the merchandise, its weight, origin, and value; and it is not conceivable that these details could have been prepared and forwarded by any one but the person who administered rightfully a port subject to his full authority. It is evident that even then the Royal order of San Lorenzo was a dead letter for the reasons set forth.

On the 20th of November of 1805,² just two years after the Royal order of San Lorenzo was issued, the Secretary of War, Señor Caballero, wrote to the Secretary of Hacienda, Señor Soler, as though the said Royal order never had been issued, an attitude which can in no way be harmonized with the continuance in force at that time of this Royal order.

Minister Caballero referred to the urgent necessity for the prompt remittance of funds to the Captain-General of Guatemala, for the Mosquito establishments, and by means of deliveries that could and should be adopted in

¹*Ibid.*, pp. 464-466.

²*Ibid.*, p. 467.

order to avoid delay and risk occasioned by the transfer of the funds deposited in Havana. It is evident that if, at the end of 1805, the said Order of San Lorenzo had not already become wholly innocuous, the President of Guatemala would not have been the one to have charge of the administration of funds to meet the requirements of the Mosquito establishments—not of one or two, but of all of them, since the document referred to includes them all and excludes none of them.

This appears with great clearness in the despatch of December 13, of the same year of 1805,¹ addressed by the Secretary of Hacienda to the Secretary of War, in which despatch reference is made to the prompt remittance to the President of Guatemala of the deposit of \$100,000, appropriated for the establishments (not one or any but all), of the Mosquito Coast. The same appears by the Royal order, dated December 13, 1805 (Doc. No. 196), referring to the same matter, and also by a communication from the Viceroy of New Spain to the Secretary of Hacienda of July 1, 1805.² So that, not only in Guatemala and in Madrid, but in Mexico, there was complete accord as to one basic fact; the jurisdiction of the Captaincy-General of Guatemala over all the establishments of the Mosquito Coast—a jurisdiction absolutely incompatible with that of the Viceroy of Santa Fe, under the hypothesis that the said Royal order of San Lorenzo had any existence at that period.

In that year of 1805, on April 22,³ the Governor of Costa Rica, Don Tomás de Acosta, notified his subordinate, the Sergeant in command of the detachment at the Port of

¹*Ibid.*, pp. 468, 469.

²*Ibid.*, p. 470.

³Peralta, *Límites de Costa Rica y Colombia*, p. 194.

Matina, of that province, on the North Sea, that during the period of the war then raging, he would not have the political command therein, because the military command which constituted his principal obligation required all his care; therefore he would assume only the political command in absence of Don Sebastián de Guevara, Don José Francisco Gómez, Don Vicente Corral, Don Pedro García, or the officers of the colored militia, José Miguel Cárdenas and José Antonio Solano; but that the military command must be held by the said sergeant commander of the detachment always and above everyone, in peace and in war, unless in some military engagement there was some veteran or militia officer who held a Royal appointment, in which case the latter would take over the command.

This document demonstrates several things, to wit, that in 1805 there was at the Port of Matina a military detachment; that the chief of that detachment exercised the political command when the order was issued; and that said Port was subject, both in political as well as in military affairs, to the Governor of Costa Rica. There is no way, therefore, of reconciling the order stated with the co-existence of a jurisdiction exercised by the Viceroy of Santa Fe over the north coast of Costa Rica; from which it may be deduced, either that this coast did not form part of the Mosquito Coast—the object of the Royal order of San Lorenzo—or that that Royal order was not regarded as in force.

On the 3rd of May of the same year¹ the Governor of Costa Rica, Señor Acosta, transmitted to his subordinate, the Sergeant Commandant of Matina, detailed instructions concerning the treatment which should be given at that port to the residents of the Island of San Andrés. Acosta

¹*Ibid.*, p. 195.

said that as these were vassals of the King of Spain they might have free entry in the ports of his Majesty, provided they exhibited the corresponding license from the governor of the island; that they could not be prevented from buying in the Valley of Matina, but that purchases must be for cash only and in no other way; and that when they arrived with register from Cartagena or any other port that was opened, they would not be able to sell anything whatever in the valley except in cases where the whole of the cargo was sold and register taken to the city of Cartago in order that both might be examined by the official of the Royal Hacienda, who would demand the duties and permit the sale, if everything was arranged. This despatch is proof showing either that the Port and Coast of Matina were not in the Mosquito territory—the object of the Royal order of San Lorenzo—or that the order was without effect, for the fact of the jurisdiction of the authorities of Costa Rica in that port was in open conflict with any authority under that order.

THE YEAR 1806.

On the 28th day of May of this year,¹ the Governor of Costa Rica, Señor Acosta, ordered the Subordinate Judge and Commander of the Valley of Matina to afford the Reverend Padre, President of the Mission of Orosi, all the assistance that the latter requested for the holy purpose of gathering in the Christian Indians, who were absent from their villages, wanderers and fugitives in those mountains; this, however, without the use of weapons, unless the Indians should use them. At the same time the governor commanded that the fugitives be assured that they would not receive the least punishment for their

¹*Ibid.*, p. 196.

wrongdoing. This document authoritatively demonstrates the exercise of jurisdiction on the part of the Governor of Costa Rica in the Port of Matina and in its mountains.

On the 3rd of June following,¹ Governor Acosta ordered his immediate subordinate at Matina to let it be understood, in clear and expressive terms, by the apostate Indians whom the Reverend Father before mentioned was going to gather in from the mountains, that without any fear whatever they could come with the friar, since he had given his word to him that they would in no way be punished or molested by the governor or by the justices of their villages on account of their flight; that for this one time they were pardoned and permitted to select that village in the province which best suited them, and to live therein according to the laws of God and the King; and that if they did this they would all be kindly treated.

Another document which also proves the jurisdiction of Governor Acosta in Matina, is the note which he addressed to the Commandant and Judge of that valley, dated October 7, 1806.² By it that chief intimated to his subordinate that he should live with the greatest watchfulness and observe every precaution, in view of the war in which the King was engaged; and he repeated, that in the Port of Matina he should not permit the entry of any vessel which did not appear to be really Spanish and to come to that port with a legitimate purpose. The governor added the caution that the residents of San Andrés could not be considered at that time as Spanish subjects, because they did not live under the flag and laws of His Majesty; therefore, it was not lawful to trade with them.

¹*Ibid.*, p. 197.

²*Ibid.*, p. 197.

But the Royal order of San Lorenzo received its death blow (if, indeed, the blow had not already fallen) in the provisions of another Royal order, issued November 13, 1806 (Doc. No. 197), which did away absolutely with the first order and confirmed and ratified the jurisdiction of the Captain-General of Guatemala over all matters in the Colony of Trujillo and other military posts on the Mosquito Coast (not of part, but all of it), whether of justice, police, finance or war, in compliance with the Royal orders beginning in the year 1782, which authorized the said Captain-General to occupy, defend and settle that coast (not partially, but in its entirety), until, that object having been attained, in whole or in part, His Majesty might deem it desirable to change the course prescribed.

This last Royal order is absolutely incompatible with the subsistence of the Royal order of November 20, 1803; for it is inconceivable that one and the same territory can be subject to two opposed and exclusive jurisdictions at the same time. It is true that this decision was the result of a quarrel that arose between the Captain-General of Guatemala and the Governor-Intendant of Comayagua, who claimed sole jurisdiction over the port of Trujillo and other establishments located in his province. The terms of the resolution, however, were not limited to the provincial territory subjected to the Governor-Intendant of Comayagua; they were absolute, and embraced the whole of the Mosquito Coast and the establishments founded, and to be founded thereon, and such as had been created in that exclusive jurisdiction, under the charge of the Captain-General of Guatemala, by the series of Royal orders which, from the year 1782, were issued for the occupation, defense and settlement of

said Mosquito Coast in its entirety—Royal orders that are of record and were respected as being in force and effect.

Following is the text, substantially, of the resolution embodied in the Royal order of November 13, 1806:

“The King having been informed by the letters of Your Worship of March 3, 1804 (Nos. 416 and 417), and by the accompanying documents, * * * *His Majesty has resolved that Your Worship is the one who must have sole charge and the absolute cognizance of all the affairs that arise in the Colony of Trujillo and the other military posts of the Coast of Mosquitos, concerning the four matters referred to [justice, police, finance and war], in compliance with the Royal orders issued from the year 1782, which authorized you to occupy, defend and settle that Coast, until that object, being in whole or in part secured, His Majesty may deem it suitable to change the present system* * * *.”

What military establishments are those that, belonging to the Mosquito Coast, are declared by the *Royal order* of 1806 to belong to the exclusive jurisdiction of the Captain-General of Guatemala? They are referred to in the same *Royal order* that revived them and include all the *orders* issued regarding the matter, from the year 1782 forward. Those *Royal orders* are not enumerated therein specifically, but they are well known. A number of them, together with documents which explain their texts, are described below:

(a) 1782, June 30. Royal order to the President of Guatemala to fortify the Port of Trujillo, install and maintain therein a competent garrison for its defence, and form and maintain a small settlement of people from the Kingdom of Guatemala, until families can be sent from Spain and the Canary Islands.¹

¹Peralta, *Costa Rica y Costa de Mosquitos*, p. 348.

(b) 1783, August 25. Instructions communicated to the President of Guatemala, calling upon him to require the evacuation of the Mosquito Coast by the subjects of Great Britain clandestinely established on the Tinto River, at Gracias a Dios and in other regions of the same coast; and to cause them to be gathered within the district of the Walix, Hondo and Nuevo Rivers, which had been conceded to them for cutting wood.¹

(c) 1783, December 6. Royal order to the President of Guatemala, wherein the King, having been advised that the English had abandoned the Coast and establishments on the Tinto River, and had retired to Cape Gracias a Dios, ordered that the rebuilding of the city of Trujillo be undertaken and that the Island of Roatán be occupied by a small detachment; it being well understood therein that His Majesty reserved the right to appoint a governor or commandant for the Port of Trujillo and Roatán, who should be immediately dependent upon said President.²

(d) 1784, April 18. Instructions of the Viceroy of Mexico for the defense and government of the Kingdom of Guatemala. Article 1 has for its object the eviction of the English who had been introduced among the Mosquitos and Zambos Indians in the territories and on the coasts that are located *from the Tinto River as far as the San Juan and its port*. Article 2 commands that the Governor of Trujillo, Captains Delgado and Pereira and the necessary troop proceed, with a banner of peace, to Criva (Black River), Laguna Azul and Cape Gracias a Dios, or to any other localities where the English were

¹*Ibid.*, p. 213.

²*Ibid.*, p. 348.

established, and to inquire of William Laure, who had always been Governor of that territory—or of whoever might be at the head—whether he had orders from his government to retire from those regions, etc. Article 3 states that if it should be necessary to make war on the Mosquitos Indians, they could close the mouths of the rivers and lagoons, so that those Indians or those who follow their fortunes, may not be able to make their way out to the sea, and on the other side they could shut them in and pursue them with expeditions descending the Mico River, which empties into the Lagoon of Bufis (Bluefields) and by way of the Segovia, which enters in the Port of Cape Gracias a Dios; and further, another expedition could go by the Paun River, whose waters flow into the Lagoon of Criva (Black River). Article 6 provides that after the English have retired from the said coasts a garrison with artillery should be placed at Cape Gracias a Dios. Article 10 orders that certain vessels patrol the whole length of the sea coast, the three islands of Guanaja, Roatán and Utila and those of San Andrés. *The Port of San Juan and its river* are referred to in Article 10, without making any provision.¹

(e) 1786, September 24. Royal order, addressed to the President of Guatemala, for the evacuation by the English of the Mosquito Coast and their transfer to the establishment that they occupy in Yucatán. In it are given the most detailed instructions, none of which, however, are of immediate interest, except the final provision. In order that the possession of the lands that the English are to evacuate may be assured for the Spanish in permanent terms, and with the object also of closing the port to the

¹*Ibid.*, p. 231.

smuggling that may be carried on there, the King, among other things, determined that four settlements should be formed and well defended on the *Tinto River*, and at *Cape Gracias a Dios*, *Bluefields* and the mouth of the *San Juan River*; and it is his will that with people from the Kingdom of Guatemala, and under the suitable precautions laid down by the Captain-General, these Spanish establishments be at once begun; with the understanding, however, that from the Peninsula or from the Canary Islands some families would be sent with which to increase and reinforce them; with this in view the Captain-General was to report and make suggestions concerning the matter. And it is added, that for the assistance of war vessels or otherwise, notice shall be given by the Ministry of Marine to the Governor and Intendant of that place and to the Viceroys of Mexico and Santa Fe, to comply with orders formerly given to them, in order that the Captain-General may be assisted with such resources as he may request for that purpose.¹

(f) 1787, January 23. Royal order referring to what was provided in the earlier order of September 24, 1786, which commanded the erection of four Spanish settlements, well defended, on the *Tinto River* and at *Cape Gracias a Dios*, *Bluefields* and the mouth of the *San Juan River*, and providing for assembling and sending to the Captain-General a hundred and fifty families of poor laborers and artisans from Galicia and the Asturias and sixty from the Canary Islands; it being well understood that His Majesty's desire was that in the villages in the Island of Roatán and other regions of the coast desirable for occupation there shall be established, united and intermingled, the families coming from the Kingdom of Guate-

¹*Ibid.*, p. 254.

mala and those that are sent as reinforcements, in order that each may help the other and all devote themselves to the work with honorable emulation.¹

(g) 1788, January 20. Royal order, showing that the King was informed of the arrival of sixty families from the Canary Islands for the establishments of the Mosquito Coast and how the Captain-General of Guatemala has assisted them with gifts and useful things and the other arrangements he has made in the matter.²

(h) 1788, August 1. Royal order, wherein is communicated to the President of Guatemala the provision that was directed to the Intendant at Havana, not to spare the assistance that the said President requested for the needs of the Mosquito Coast.³

(i) 1789, August 20. Royal Order to the President of Guatemala. The King was advised of the arrival of the Galician families on the Mosquito Coast and of the provisions made by the President for their maintenance, which His Majesty approved.⁴

(j) 1789, August 20. The King was advised of the number of sick and dead since the 4th of October, 1788, among the families of European settlers; and of the establishment of Cape Gracias a Dios on August 28, of the same year, all of which was communicated by the President of Guatemala.⁵

(k) 1789, August 20. Approval by the King; in order to meet the heavy demands and expenses caused by the evacuation of the Mosquito Coast by the English and the estab-

¹*Ibid.*, p. 349.

²*Ibid.*, p. 351.

³*Ibid.*, p. 351.

⁴*Ibid.*, p. 351.

⁵*Ibid.*, p. 352.

lishment of families therein, the President of Guatemala begged the Viceroy of Mexico for three hundred thousand pesos.¹

(l) 1790, May 19. Correspondence of the Viceroy of Santa Fe, Don Joseph de Ezpeleta, wherein it appears that by Royal order of August 20, 1789, he was notified to cooperate with Robert Hodgson, who was charged with certain works in the projected colony at Bluefields, *and should be subject to the Presidency of the Kingdom of Guatemala, to which said port belonged*. The Viceroy added that Hodgson recognized it very well.²

(m) 1790, May 20. The President of Guatemala was notified that with regard to matters pertaining to the Indians and the establishments *on the Mosquito Coast*, he should continue to carry on correspondence with the Minister of War of the Indies.³

(n) 1791, June 28. Royal order to the Viceroy of Santa Fe, which stated that the King being advised of various occurrences on the Mosquito Coast, of which an account was given by the President of Guatemala, His Majesty has resolved upon the provisions contained in the six Articles of the order, to wit:

1. That Hodgson be admitted into Guatemala with the rank and salary of colonel, which is therein granted to him; that he shall be paid from the treasury of Cartagena what is due him, and that he may select a place for his residence, taking from Bluefields all that belongs to him.

2. Granting a pension to the widow of the Mosquito Governor, Antonio de Castilla Bretot.

¹*Ibid.*, p. 352.

²Peralta, *Costa Rica y Colombia*, p. 243.

³Peralta, *Costa Rica y Costa de Mosquitos*, p. 353.

3. Permission to the English colonist, Meany, to bring in, each year during a period of three years, a vessel laden with articles from England for trade with the Mosquito Indians; the Spanish merchants being allowed to do the same should they so desire.

4. That in the traffic with said Indians no monopoly shall be exercised by anyone whatsoever, and that fixed prices be put on the articles bought and sold by the Indians, which prices the President shall arrange with Meany.

5. That suitable arrangements be made so that the presents to the Indians be made equitably according to a fixed quota and on appointed days; and that for the assortment of articles which are to be given out the President will make proper dispositions with the said Meany.

6. That there be carried into effect, without delay, and in convenient form, the establishment directed to be made at Bluefields.¹

(o) 1791, December 19. The Viceroy of Santa Fe answered the Royal order above mentioned, saying that *he was only concerned with compliance with the first Article* relating to the provision that Colonel Hodgson was to be paid what was due him from the treasury of Cartagena, and that to that end he had authorized the governor of that place to write to Hodgson, who was in Guatemala, to present his accounts so that they might be audited and payment made of what was properly due, less the necessary deductions. He added that as it might happen that the President of Guatemala, in order to comply with the other subjects referred to in the Royal order might ask some further assistance from that viceroyalty, he had authorized the said Governor also to attend to the matter

¹Peralta, *Costa Rica y Colombia*, p. 288.

considering the distance and the delay in making arrangements, which might cause inconvenience in the service.¹

(p) 1801, January 3. Plan for economies by the Brigadier Don Roque Abarca (Doc. No. 182). He noted that of the establishments on the Mosquito Coast, two have been extinguished—those at the Tinto River and Gracias a Dios—and he advised also doing away with the establishment at Roatán, keeping only that of Trujillo. He added that there should be no thought of going back to occupy *Tinto River* and *Gracias a Dios*, much less of settling *Bluefields*. The said establishments on the Mosquito Coast were the cause of the desolation of the entire Kingdom; and for the defense of the latter its desert places should be abandoned, for lack of resources of all kinds in the zone of the north coast. In the establishments of *Trujillo*, *Roatán*, *Rio Tinto* and *Gracias a Dios*, during the last ten years, there have been consumed, without any favorable result, enormous sums of money, and innumerable lives have been lost. He then detailed minutely the plan for reforms.

(q) 1802, October 5. Royal order approving the plan of Brigadier Abarca, but directing the establishments on the *Rio Tinto* and *Roatán* be kept up provisionally; also providing that two vessels from Havana be detailed to patrol the Mosquito Coast under the orders of the Captain-General of Guatemala, to whom a copy of the plan of Brigadier Abarca is sent for its fulfillment.²

(r) 1803, February 3. Despatch from the President of Guatemala to the Secretary of Hacienda, directing that it be declared that *all matters relating to the Mosquito Coast*

¹Peralta, *Costa Rica y Costa de Mosquitos*, p. 290.

²*Ibid.*, p. 337.

were under his exclusive charge. As this order has been already reviewed only the following will be quoted therefrom:

“For greater clearness I enclose copies of said Royal Orders [cited by the legal adviser of the President, in support of his favorable opinion] numbered 1 to 10. By all of these it is evident that the establishment of Trujillo, since His Majesty determined to make it in 1783, and so far as it has relation with the Mosquito Coast, the settlement that was agreed to be made there, its defense, police administration and government, have been the sole and only object exclusively entrusted to this Presidency.”¹

The Royal order of November 13, 1806 (Doc. No. 197), is in perfect harmony with all the facts set out in the documents analyzed and of a date subsequent to November 20, 1803, the provisions of which documents contradict the debated order of San Lorenzo, and implicitly but unquestionably hold it as non-existent; and the solemn confirmation of the duties and powers of the Captain-General of Guatemala in all the matters relating to the Mosquito Coast and the establishments created and to be created therein, is a most eloquent vindication for that high colonial functionary, in view of two facts of a very grave character which show the evident and acknowledged mistake of the ministerial determination taken November 20, 1803, against the dearest interests of the Kingdom of Guatemala, and the allowances made for whoever was found at the head of its destinies.

These two facts—of a peculiarly serious character—are the following:

¹*Ibid.*, p. 341.

First, the suspicion suggested by the Sub-Inspector, Brigadier Don Roque Abarca, very forcefully stated by him and supported by the Captain-General, that the reasons invoked by the Governor of San Andrés, O'Neill, for obtaining and carrying out the segregation of San Andrés and the Mosquito Coast, from the Kingdom of Guatemala, grew out of unworthy motives, that is to say, for profit by means of smuggling; and

Second, the confirmation of the opinion given by Señor Abarca and ratified by President González, prophesying the certain failure of the extravagant plans of the Governor of San Andrés, and the consequent immediate fall of that island—the center of the whole project—into the power of the enemy, and the fact that, in justification of that opinion, the whole fabric of O'Neill was destroyed and overwhelmed without even a pistol shot.

The despatch in which the Viceroy of Santa Fe communicated to the Court this serious and irremediable loss, is an elegy; and although he shows in that document that he had given positive orders for the recovery of the Island of San Andrés, the resolution taken by the War Junta of Cartagena on June 9, 1806¹ (which resolved to abandon the reconquest of the island—such efforts having been deemed useless to secure so unattainable an end), was to the effect that the projects of O'Neill had been vain mirages; and thereafter there was no thought of putting the Royal order into practice—an order given without any other basis than the illusions which had been thus dissipated.

On December 3 of the same year, Governor Acosta ordered the Judge and Commandant of Matina to seize

¹Peralta, *Costa Rica y Costa de Mosquitos*, p. 477.

and confiscate the goods of every foreigner who arrived at the port, and to send him at once, under arrest, to the city of Cartago with his goods and the corresponding security.¹

THE YEAR 1807.

On the 5th of February of this year, the Governor of Costa Rica, Don Tomás de Acosta, issued an order directing the Commandant of the detachment of Matina, to deliver, immediately on receipt of the order, the political and military command of the valley and port to Captain Don Sebastián de Guevara. With regard to the economic administration of the detachment the commandant so notified should retain it.²

THE YEAR 1808.

On the 31st of March of this year a Royal order was issued (Doc. No. 198) in which it is provided that the Port of San Juan de Nicaragua should continue open and that to encourage the clearing and cultivation of the lands near by, the same favors be granted to the inhabitants that were previously accorded to the new settlers of the Mosquito Coast, with exemption also from duties and tithes for ten years on the products gathered within a distance of ten leagues from the river on either bank. It was determined, also, in said Royal order to endeavor to establish a settlement, not to exceed 200 residents, close to the said San Juan de Nicaragua River. This Royal order conclusively demonstrates several points of especial interest in the present litigation, to wit: First, that the territory from the River San Juan de Nicaragua, for a distance of ten leagues on its banks, did not form part of

¹Peralta, *Límites de Costa Rica y Colombia*, p. 198.

²*Ibid.*, p. 199.

Mosquito territory; second, that this territory along the San Juan River was under the jurisdiction of the Captaincy-General of Guatemala; and third, that the functions of the Captain-General were confirmed in that he was charged with the new settlement directed to be made in said territory.

On September 12, of the same year the Governor of Costa Rica consulted the Captain-General of Guatemala as to whether any duties were to be collected on the traffic which the Mosquitos were in the habit of making in Matina with old iron and other things they received from the English in Bocas del Toro when going and returning from the turtle fisheries in exchange for provisions which the residents of the Valley of Matina gave them—a traffic which it is said had been carried on since very early times. This document demonstrates the effectiveness of the jurisdiction of the Captain-General of Guatemala and the Governor of Costa Rica in the Valley of Matina.¹

On the 13th of the same month of September, Governor Acosta instructed the Commandant-Judge of Matina,² that if there arrived at that port any English vessel under flag of truce, the packets of papers which it might bring were to be received and it must set sail again at once without being permitted to stop at the port, but that within two months it might come back for the response of the President of Guatemala. Very polite attention, however, was to be given to such vessel, but if it persisted in refusal to leave the port or committed any hostile act, force was to be met with force, and immediate report made. But in case the vessel was in need of supplies

¹*Ibid.*, p. 201.

²*Ibid.*, p. 202.

produced in the valley, they might be given at a fair price, payment to be made specifically in money and under no circumstances in merchandise.

THE YEAR 1809.

On the 17th of March, 1809, Governor Acosta once more addressed the Sergeant-Commandant of Matina (Doc. No. 484), telling him that in view of the serious and contagious illness of the subordinate judge of that valley, the said commandant was entrusted with the political command of the district, under an inventory; and that as soon as Captain Don Sebastián de Guevara arrived at Matina said command be delivered to him.

On the 19th of April of the same year Governor Acosta addressed to the King a long and detailed report (Doc. No. 485), with a view to securing for the province under his jurisdiction the income from tobacco of the Kingdom of Guatemala, or that of Mexico, or Peru, to relieve them from the misery in which they found themselves by reason of the long and poor roads separating the principal settlements from the ports on either sea and the small returns from the ordinary products of the country. Referring to the North Sea he gave details of the Ports of Matina and Moín, belonging to the province, and yet in that most important document not the slightest indication appeared that said north coast of Costa Rica might be a territory dependent upon any authority foreign to the Government of Costa Rica and the Captaincy-General of Guatemala, as would have been the case had the Royal order of San Lorenzo at that time possessed any legal value.

On June 3 of this same year, Governor Acosta communicated to the Judge of Matina a copy of the order of the Captain-General of the Kingdom, dated the 6th of May previous (Doc. No. 486), concerning the special

vigilance and great precautions to be observed in connection with the shipments that came from Spain, the port not being open for such commerce, but only for petty commerce; so that, under no pretext, should any vessel be admitted that did not come from Cartagena; and then only after everything contained in said order had been observed, with other instructions referring to compulsory arrivals.

In this year another document is recorded, dated September 20, and of the highest significance.¹ It consists of a despatch addressed by the Governor of Costa Rica to the President of Guatemala, in which he asked whether there was any reason why he should not furnish the cattle and other products that were asked for by the Governor of San Andrés. Governor Acosta added that, although the number of head of cattle and the quantity of products the exportation of which were asked for might be much larger, far from prejudicing the province, it would be helped by the influx of money, or merchandise at reasonable prices. It is clear that, except on the theory that the Royal order of 1803, which directed the execution of the plan of the Board of Fortifications and Defense of the Indies, wherein the Island of San Andrés was made the port of call and support for the encouragement of the settlement of the Mosquito Coast, was a dead letter, there is no explanation for the inquiry referred to, which reveals the fact that the commerce of Matina was subject entirely to the authority of the Governor of Costa Rica and to his immediate superior, the President of Guatemala.

On the same date, September 20, of the year 1809, Don Tomás de Acosta wrote to the Captain-General of Guatemala, a despatch which merits special attention (Doc. No.

¹*Ibid.*, p. 207.

199). The Governor said that in a private letter of the 24th of the previous August, the Governor of the Island of San Andrés stated, among other things, what His Worship would see in the copy thereto annexed. Governor Acosta added that, if the command of the coast, from Cape Gracias a Dios, inclusive, to the Chagres River, exclusive, really belonged to the Government of San Andrés, that governor, not being subject to the Captaincy-General of Guatemala, would extend his jurisdiction thereto; that doubts and controversies would arise between the Government of San Andrés and the Government of the Kingdom of Guatemala, which governments he said, have embraced the coast of both seas from time immemorial; that the Detachment of Matina and the people that live there would be dependent on the Government of San Andrés; and that to it would belong the charge of the political and military administration and jurisdiction over shipwrecks on that coast; that in such case, in the event of a surrender, to the enemy of the district under its command, as has happened, the victor could enter upon the coasts of the Kingdom of Guatemala, and, in virtue of such surrender, could establish himself therein; that the orders of the Governor of San Andrés, given by himself or by the Viceroy of Santa Fe, if they did not coincide with those of the Captain-General, would give rise to the greatest confusion, making trouble even in times of the greatest tranquillity. Governor Acosta said, finally, that in his archives the Royal orders cited by the Governor of San Andrés did not appear, wherefore he would continue to go on without change in the command of the Province of Costa Rica and its coasts, until he received orders to the contrary. This communication reveals, first, that the Coast of Matina was in the actual possession of the

Provincial Government of Costa Rica; and second, that the Royal order of San Lorenzo was not executed, since it did not appear in the archives of the Government of Costa Rica, although it was of a comparatively recent date.

The preceding inquiry was quickly answered by the Captain-General of Guatemala and, on November 7 of the same year, he sent to the Governor of Costa Rica a document in which he decided the matter contrary to the pretensions of the Governor of San Andrés. This appears by the answer, addressed by Governor Acosta to the President of Guatemala, dated December 1, 1809 (Doc. No. 200).

By virtue of this answer, Acosta wrote on December 5 to Governor O'Neill (Doc. No. 201), that, being desirous of making no mistake, he had consulted the Captain-General of the Kingdom as to the contents of his private letter concerning the extension of his government to the coast of the Captaincy-General, from Cape Gracias a Dios to the Chagres River, and that in response to his inquiries the Captain-General had made the statements which the Governor of San Andrés would find in the copy annexed, the contents of which he could not neglect, either with regard to the command or to the duties on products not produced in their respective territories. On the margin of that document is found the following statement:

"LET COPY BE SENT OF THE OFFICIAL
COMMUNICATION OF THE SEÑOR PRESI-
DENT, WHICH DECLARES THAT THE COM-
MAND OF SAN ANDRÉS DOES NOT REACH
TO THESE COASTS."

The archives of Spain, Guatemala and Costa Rica have been carefully searched and not a word has been found by way of reply, protest, complaint or contradiction from

O'Neill or the Viceroy of Santa Fe which would support the claims of the former.

The omission and silence, from 1809 to 1821, can be explained perfectly. The denial of the claims of the Governor of San Andrés must have reached the hands of O'Neill at a time that coincided with the insurrectionary movement in the viceroyalty against the authority of the mother country. The Royal order of 1803 which, on account of the suspicion attaching to O'Neill, had been paralyzed in its operation from the very beginning, and thereafter quite forgotten, was looked upon as a dead letter and would have been the height of folly to put it into force after the Island of San Andrés fell into the hands of the enemy, to the prejudice and against the earnest protests of the Kingdom of Guatemala which was tranquilly adhering to the mother country, and for the benefit of a province in which the Royal authority had been disregarded and the authorities of which had great difficulty in making the sovereignty of Spain respected.

The moral certainty that the Royal order of 1803 could not have been in force in 1810, after the cry of revolt had been raised, is so overwhelming that it is really superfluous to insist on the demonstration already fully made that the coasts of the Kingdom of Guatemala on the North Sea never for one moment ceased to be subject to the jurisdiction of its Captain-General, in consequence of what was resolved in the Royal order of San Lorenzo. However, the statement of the facts will be continued which, between 1810 and 1821, confirm and demonstrate that truth—already clearly proven; for in litigations of this kind no proof should be omitted, however superabundant it may seem, that has any bearing on the highest material and

moral interest of the countries that are engaged in the controversy.

THE YEAR 1810.

On the 28th of May of this year Governor Acosta gave an account to the Captain-General of Guatemala of the fulfillment of the general order of April 22 previous (Doc. No. 202); and he added that he would repeat the orders in the matter to the Judge and Commandant of Matina in order that watch might be kept to prevent the entrance of any foreigners or suspicious Spaniard into the Kingdom by that coast.

On July 3 a Royal order was issued addressed to the President-elect of Guatemala authorizing him to permit the landing at the port of the River San Juan de Nicaragua of two or three expeditions coming from Cartagena with foreign merchandise, ON CONDITION OF THE PAYMENT (the regulation of which is left to the prudent decision of that functionary) OF TWENTY THOUSAND PESOS, BESIDES THE CORRESPONDING DUTIES, the same amount that was required on a prior shipment of like character coming from Santa Marta, and which, by reason of special circumstances, had been accepted before at the Port of the Gulf of Honduras under the responsibility of the Presidency. This document shows that the authorities of Guatemala exercised full and undisputed jurisdiction in financial matters at the Port of San Juan de Nicaragua, exactly as though the Royal order of San Lorenzo had never existed; and it also demonstrates that the said Port was held to be not a part of the Mosquito territory, since import duties were collected by it, when, according to the Royal order of November 20, 1803, the Mosquito territory enjoyed the favor of free commerce

with the Spanish colonies, exempt from all duties for imports or exports (Doc. No. 474).

THE YEAR 1811.

The Deputy to the Cortes for the Province of Costa Rica, Don Florencio del Castillo, in order to encourage the agriculture and the commerce of that province, asked for the opening of the Port of Matina or of Moín on the north coast of Costa Rica, with the advantage of exemption from duties on all the products of the country exported by the new port for the space of ten years. At the session of August 15, the Cortes resolved to ask for a report from the Council of the Regency. The latter called upon the Council of the Indies to give an opinion, and the Council, in its report of October 31, 1811, advised that the opinion of the Captain-General of Guatemala be heard on the subject, with the provision that, taking the reports to be favorable concerning the utility and advantages which would result from the opening of the said port, an exemption from duties for ten years, be granted to the port, and that an account be given of what had been determined, for the corresponding Royal approval. But the Cortes did not follow the course marked out in the opinion of the Council of the Indies; and on December 1 (Doc. No. 204) issued the following decree, abundantly sufficient to repeal absolutely the Royal order of San Lorenzo, if it had then been in effect on the north coast of Costa Rica.

"DECREE CVIII.

"Opening of the Port of Matina, in America.

"The General and Extraordinary Cortes, desiring the welfare of the Spaniards in all the countries of the Monarchy in both hemispheres—

"Decrees:

"The Port of Matina, in the north of Costa Rica, is opened and there is granted to the inhabitants thereof, for the period of ten years, exemption from duties upon the fruits and products of their country which they export from the said port. The Council of the Regency will take knowledge of it for its execution and will cause it to be printed, published and despatched.

"Done at Cádiz, December 1, 1811."¹

This decree of the Cortes of Spain is the most formal, solemn and indestructible recognition that the Port of Matina then belonged to the Province of Costa Rica; and in the proceedings prior thereto it was stated, clearly and unquestionably, that the Council of the Indies in 1811 held and considered that it was subject to the authority of the Captain-General of Guatemala, since he was made the judge as to whether it was favorable or unfavorable to have the said port opened, with the enjoyment of freedom from duties for ten years.

The decree is furthermore of supreme importance in the present debate, since it loudly proclaims that the said port on the north coast of Costa Rica did not constitute any part, great or small of the Mosquito Coast. It proclaims it because, the Mosquito Coast, enjoying as it did, in 1811, the liberty of unrestricted commerce and other favors that were conceded to it for the success of its immediate colonization, according to a Royal order of November 20, 1803 (Doc. No. 474), if Matina had been an integral part of the Mosquito Coast, the decree of the Cortes to which refer-

¹Collection of the Decrees and Orders Issued by the General and Extraordinary Cortes, from September 24, 1811, to May 24, 1812, directed to be published by order of that Body. Reprinted by order of the Government in Seville, 1820, Vol. II, p. 34.

ence has just been made, the permission to open the Port of Matina, and the exemption from fiscal duties on exports, would have had no purpose, and the favors would have been much more restricted than were those conceded since 1803 to the Mosquito Coast. The opening decreed by the Cortes was, nevertheless, very well received in the Province of Costa Rica, for beside encouraging the commerce of imports and exports by the northern littoral, it granted an exemption which the province had not theretofore enjoyed, for the precise reason that Matina was not a part of the Mosquito territory, but a littoral which never for one instant had ever been subject to the lordship of the petty sovereign of Mosquito and the powerful nation that supported the pretensions of that half savage chieftain.

THE YEAR 1812.

The Governor of Costa Rica, on the first of July of this year (Doc. No. 208), acknowledged receipt from the President of Guatemala of the Royal decree concerning the opening of the Port of Matina of which sovereign disposition he took note for its fulfillment.

On September 2 of the same year, Don Juan de Dios de Ayala, Governor of Costa Rica, communicated to the Captain-General (Doc. No. 209) the fact that the schooner *San Miguel*, coming from Kingston, Jamaica, and destined for Chagres had been forced, by stress of weather, to put in at the Port of Matina; the news of the landing of the Presbyter, Don Rafael Arnesto de Troya, Chaplain of the ex-Governor Don Tomás de Acosta; the arrival of Francisco Anglez, who in a few days died at Cartago *ab-intestato*; and the fact that, in regard to various articles brought in by the Señores Valenzuela and Ramírez, proceedings had been taken which appeared in

the testimony accompanying the communication, the matter having been dealt with according to law.

THE YEAR 1813.

The Governor Ayala above mentioned, on October 5 of this year (Doc. No. 213), informed the Captain-General that the *Urbanos Pardos* (Mulatto Militia) stationed in the Valley of Matina, had contributed in the months of July, August and September, the sum of two hundred and ninety-five pesos and four reales as a patriotic donation to assist the mother country in the war then in progress.

THE YEAR 1814.

Under date of March 23, 1814,¹ the Provincial Deputation of Nicaragua and Costa Rica addressed to the Regency of the Kingdom a representation, asking that the said provinces be erected into an audiencia and captaincy-general. In the description which is made of their territory, there is a paragraph which says: "They are washed by the seas of the south and the north. On the former among others that could be improved by artificial means are the ports of Punta Arenas, Realejo and Escalante; and on the north the ports of MATINA, Pantasma, Palmas and San Juan."

THE YEAR 1815.

On August 5 of this year the Governor of Costa Rica wrote to the President of Guatemala (Doc. No. 218), answering the official communication of the Royal order of April 12, preceding, concerning the observance of the Laws of the Indies with respect to foreigners. The Governor stated that he would comply strictly with the orders that were given, in order that no person might be permitted to

¹Fernández, *Documentos*, Vol. X, p. 448.

land at the Ports of *Matina* and Puntarenas without the most careful examination and a detailed statement of the baggage and effects which they might bring with them, with very particular inspection of any papers that might be found therein; which order the governor stated he had communicated to the proper authorities at the said ports.

On March 16 an order was issued,¹ in the city of León de Nicaragua, by the Dean of the Metropolitan Cathedral Church, Vicar General and Governor of the Bishopric of Nicaragua and Costa Rica, in the name of Dr. Don Fray Nicolás García Xerez, Bishop of the Diocese, calling on the faithful Christians residing and being in the city of Cartago, with its annexed villages, constituents, AS FAR AS THE VALLEY OF MATINA, inclusive, to fully pay the contribution of one-tenth, under the severe spiritual penalties with which they are threatened in the said letter; that is to say: first, major excommunication, if they do not within eight days counted from the publication of the order obey what is commanded; next, public excommunication, declared solemnly at high mass; and lastly, the penalty of anathema and being accursed, under the formulas that are prescribed in the document cited.

The special mention of the VALLEY OF MATINA that is made more than once in this curious document reveals the importance then enjoyed by this locality, in which were established numerous and very valuable plantations of cacao—an inexhaustible source of wealth for the inhabitants of the province, a good part of which responded for the reimbursement of large capital belonging to churches, convents, fraternities and chaplaincies, as is shown by notarial papers of that epoch, from which an extract has been taken (Doc. No. 630).

¹Fernández, *Documentos*, Vol. X, p. 501.

This document also reveals another cardinal fact in the present litigation, to wit: that the Port of Matina and its district were subject to the payment of the very burdensome tax of one-tenth. That fact by itself is *evidence* of a great truth—already proved in a very conclusive manner—that the Valley of Matina in no way whatever formed a part of the territory of the Mosquito Coast. The explanation is very clear. By a Royal order of November 20, 1803 (Doc. No. 474) there was granted to the settlers of the Mosquito territory, for the encouragement of its population, the very valuable favor of exemption for 20 years, from the payment of the tenth, and when that time was ended they should only pay a half of the tenth. Now, after 1803, Matina continued to pay, as it had before paid, the entire tenth; and under that burdensome condition it was kept until the independence of the Province of Costa Rica, unrelieved by the Decree of the Cortes of December 1, 1811, because the exemption accorded therein was limited to freedom from export duties, leaving intact the import duties and levy of the tenth—all this because Matina was not, and was not understood to be, a part of the Mosquito Coast; for if it had been the Royal order of 1803 would have favored that northern port of Costa Rica with the privilege of free commerce, exempt from every kind of customs imposts, and exempt, besides, from the heavy burden of the tenth.

THE YEAR 1816.

On April 4 of this year the Governor of Costa Rica wrote to the commandant of the detachment at Matina (Doc. No. 225) and asked among other things, for special details as to certain reports concerning the assassination of the Governor of the Island of San Andrés and of ten sol-

diers, in order to communicate them duly to the captain-general. He added that he could not assign any more troops to the guard at the mouth of the Matina River and that the commandant must live with greater vigilance, so that the valley might not be exposed to a surprise.

THE YEAR 1819.

On the 6th of April of this year the Governor of Costa Rica wrote to the commandant of the troops of the detachment of Matina (Doc. No. 229) saying that he is informed that the latter had located the guards for the defense of the valley in the regions that seemed most adequate. He advised him that he had conferred the political command of the valley upon Sergeant Simón Gutiérrez, who was at liberty to locate himself in the place most suitable, in his opinion, for the prompt administration of justice.

THE YEAR 1820.

In the territorial division made by the Provincial Deputation of Nicaragua and Costa Rica (Doc. No. 476), in compliance with a Royal order, in describing the district of Costa Rica, the Valley of Matina was included among the settlements that make up the province, which province had been organized under the charge of a military and political governor, independent of that of Nicaragua, except in financial matters. This territorial division is dated December 13, of the year last mentioned.

THE YEAR 1821.

On the eve of the proclamation of independence, on February 4, 1821, the Provincial Deputation of Nicaragua and Costa Rica made representations to the Crown (Doc. No. 231) against the free commerce between the ports

of Omoa and Trujillo, of the Kingdom of Guatemala, and the English colony of Vallis (Belize), which constituted a serious injury to the agricultural interests of Nicaragua; petition was also made that such commerce be either forbidden or extended to the ports of SAN JUAN AND MATINA, for in that case the injury to the Provinces of Nicaragua and Costa Rica would not be so great.

It would be a tedious task to cite further provisions in support of a truth which has already been abundantly proven; that is to say, that the political, military and economic life of the PORTS OF SAN JUAN, IN NICARAGUA, AND OF MATINA, IN COSTA RICA, was between the years 1804 and 1821 under the exclusive government of the Captaincy-General of Guatemala, the Government and Captaincy-General of Costa Rica and the Provincial Deputation which represented both Costa Rica and Nicaragua, as it had been prior to 1804. During the eighteen years, comprised within this period, and among the numerous documents which both parties have succeeded in collecting to illustrate the present contention, there is not the slightest trace of any provision designed to put into practical effect, on the ground, the execution of the famous Royal order of San Lorenzo. That order, as has been seen in the foregoing statement, seems to have been forgotten and passed over in less than a year after it was issued; it was not taken into account and appears to have been considered as of no value or effect, exactly as though it had never been written or communicated.

It has been seen that the Governor of Costa Rica governed without interruption in all branches of public administration, even in the minutest details, in the region of Matina, the center of the whole coast of Costa Rica on the North Sea; that the Intendant of Nicaragua,

assisted by the Boards of Finance and War, did the same with regard to the Port of San Juan de Nicaragua; and that the Captain-General of Guatemala, as their common superior, extended his vigilance and command over both ports, without opposition of any kind or on any occasion, on the part of the Viceroy of Santa Fe—all of which goes to show that the Royal order of San Lorenzo had never had any effective existence; that it had been buried under the tremendous weight of repeated Royal provisions issued with contrary significance; that it was thus converted into a mere historical document, the only value of which was, at a later period, to give a semblance of justification to Colombia's invasions in Central American territory—encroachments made with the sole purpose of obtaining a voice and vote in the negotiations for the communication between the Atlantic and Pacific Oceans, across Costa Rica and Nicaragua; and that purpose Colombia never achieved.

From the numerous documents collected the following truth is clearly proven; that in all the documents of the period, emanating from the supreme, superior and the inferior colonial authorities, the term "Mosquito Coast" was understood as being the littoral zone of the north of the Kingdom of Guatemala, but not all of it—only that section which extends from the Port of Trujillo to the San Juan River at farthest. This was the territory on the Spanish continent which was not dominated by the forces of the Catholic King; it was inhabited by warlike Indians, who, consorting with the *Zambos* and supported by the English (competitors and enemies of Spain and allies of the Indians) rather than acknowledge themselves as subjects of the Spanish Monarch gladly accepted British protection; and that protection has endured almost

to our own days. By the Treaty of Versailles Spain and England made a compact for the evacuation by the English of the Mosquito territory; and the execution of this agreement and the occupation, fortification and colonization of the places abandoned by the English, was committed to the Captain-General of Guatemala, President of the Royal Audiencia, and he was to be assisted therein by the Viceroy of Mexico and Santa Fe and the superior authorities of Havana. Not one of the measures relating to the evacuation, fortification or settlement of the Mosquito country had for its object any region whatsoever to the north of Trujillo, or to the south of the San Juan River. The Mosquito territory was therefore confined within these extreme limits, and this is abundantly shown by the documents to which reference has been made.

There is no object in making any investigation, toward the north, and beyond the establishment of Trujillo; but this is not the case with respect to the zone along the coast to the south of the outlet of the San Juan River. Exactly in that zone was located the coast and the Port of Matina, very anciently known as an integral part of the Province of Costa Rica, and much frequented from the beginning of the colony and the lands of which were cultivated with special care, for the production of cacao which constituted the principal part of the patrimony of the province, notwithstanding the depredations of pirates and the Mosquitos. That port maintained at all times communication with Portobelo and Cartagena, for the supply of articles of subsistence with which the province abounded. Long before the epoch when the compact was made for the evacuation of the Mosquito territory by the English, the Port of Matina had been garrisoned by a permanent detachment, which continued without a single day's

interruption until the Proclamation of Independence, in 1821. *This detachment was under the orders of the Governor and Captain-General of Costa Rica*, and was absolutely independent of the Mosquito establishments and did not participate, in any form whatever, in the vicissitudes to which they were constantly subject.

Among the documents which Costa Rica presents in this litigation, appears an authentic certification of the accounts kept by the Royal officials of the city of Cartago, which was the capital of the Province of Costa Rica from January 1, 1804, to December 31, 1821; in them appear, detailed, year by year, and from one period of four months to another, the expenses to the Royal Provincial Treasury for the maintenance of the detachment at Matina (Doc. No. 480). In no single item does that detachment appear as an integral part of the plan of arrangement of the Mosquito establishments. Neither can there be found a single item showing that, during the eighteen years that elapsed between 1804 and 1821, there was in the administration of that detachment, *a single order, either of the Viceroy of Santa Fe or of any of his subordinates at Cartagena, Panama or Veragua*. That detachment obeyed only the orders that were transmitted to it by its superior chief, the *Governor of Costa Rica*, through whom the orders of his chief, the *Captain-General of the Kingdom*, resident in Guatemala, were also communicated.

No effort was made by the Crown toward the colonization of Matina, because the undertaking had been already accomplished. Not a paper is to be found which indicates that the troops of the garrison ever, at any time, received supplies from Havana, as was the case with the Mosquito establishments. There was no evacuation there by British subjects, because the coast was held by the

men of the province. The communication with the capital was always kept up, and its traffic constituted one of the principal sources of revenue for the pack-train trade of Cartago. The villages of Indians along the route, from the seashore to the capital, were peaceful; far from being troublesome to travelers they assisted them with services. So it was that, when independence came, the new State of Costa Rica continued in the quiet, peaceful and uninterrupted possession of that coast, a situation very different from that of the States of Nicaragua and Honduras, where, in order to incorporate into each the corresponding section of Mosquito, they had to overcome serious obstacles that originated in the revolt of the natives, fostered by the British power, which, in the character of a protector of the so-called "Mosquito State" opposed that incorporation with tenacious resistance, finally yielding only to the opportune and energetic intervention of the Government of the United States.

Therefore it is certain that the coast of Matina never was understood as comprised in the Mosquito countries, as it is a proven fact that the Royal order of San Lorenzo, of November 20, 1803, never was communicated to the Governor of Costa Rica by the Captaincy-General of Guatemala for execution, as were always and unfailingly communicated the Royal *cédulas* and Royal orders for general observance. That Royal order never was promulgated in Costa Rica, and consequently, even supposing that it was invested with all the indispensable requisites for respect as a law, it would not have been obligatory in that province, because it was not published by public proclamation (*bando*), as was the custom at that time when the use of printing was restricted. And the Captain-General of Guatemala, in not sending to the

Governor of Costa Rica a transcript of the said Royal order for its execution, was not remiss in his duty because in his opinion (in which he was right) its effects did not extend to the Coast of Matina; and, therefore, there was no reason for communicating it. It is to be noted that the part of the Mosquito Coast segregated from the Kingdom of Guatemala—the extreme north of which reached as far as Cape Gracias a Dios—lacked a boundary on the other extreme in the direction of the Chagres River. That river was referred to, not in the character of a border line of the territory segregated, but only as indicating a direction; this is so true that it would be absurd to imagine that it could have been possible to segregate from the Kingdom of Guatemala the very considerable extension of coast that reaches from the Escudo de Veragua as far as Chagres—a littoral which did not belong to Guatemala—in order to add it to the Viceroyalty of Santa Fe, of which territory it formed at that period an undisputed and integral part.

To add to that viceroyalty the north coast of Costa Rica, from the mouth of the San Juan River as far as the Escudo de Veragua would have been a very extraordinary thing to do—a thing entirely without precedent in the mass of opinions and decisions which were taken into consideration in preparing the Royal order of 1803, which was a measure that had for its object, as definitely stated in the second opinion of the Board of Fortifications and Defense of the Indies, merely the settlement of desert coasts, which were without any kind of resources for the maintenance of garrisons for the establishments existing and projected on the Mosquito Coast, and which were separated by vast solitary spaces from the Spanish settlements that could have served as their bases for supplies,

and the traffic with which was exceedingly dangerous on account of the frequent attacks by the savage Indians, aided by the English enemies of the Spanish Crown. It would have been a very extraordinary measure, because, as before stated, it was specifically opposed to the conditions shown to have existed on the north coast of Costa Rica, whose principal port on the North Sea was settled, cultivated, civilized, garrisoned, and peacefully governed with uninterrupted communication with the interior of the province and in active trade with it and with the neighbors on the south.

TABLE NO. 1.
DIVISION OF COLOMBIA INTO DEPARTMENTS, PROVINCES, AND CANTONS, ESTABLISHED BY CONGRESS,
ON THE 25TH OF JUNE, 1824.¹

Departments.	Provinces.	Cantons.
I. Maturín, formerly Orinoco, capital, Cumaná.	1. Cumaná.....	1. Cumaná. 2. Cumanacoa. 3. Aragua Cumanés. 4. Maturín. 5. Cariaco. 6. Carúpano. 7. Rio-Caribe. 8. Güiría.
	2. Guayana, capital, Angostura.	1. Angostura. 2. Rio-Negro, chief place, Atabapo. 3. Alto Orinoco, chief place, Caicara. 4. Caura, chief place, Moitaco. 5. Guayana Vieja. 6. Caroní. 7. Uputa. 8. La Pastora. 9. La Barceloneta.
	3. Barcelona.....	1. Barcelona. 2. Píritu. 3. Pilar. 4. Aragua. 5. Pao. 6. San-Diego.
	4. Margarita, capital, Asuncion.	1. La Asuncion. 2. El Norte.

¹“Notes on Colombia taken in the years 1822-3. With an itinerary of the route from Caracas to Bogotá; and an Appendix, by an Officer of the United States Army, Philadelphia. H. C. Carey & I. Lea—Chestnut Street, 1827.” Pages 63, 64, 65, 66, 67, 68. The territorial division set forth on these pages has been found, by comparison, to be the same as that stated in the collection of laws entitled, “Cuerpo de Leyes de la República de Colombia, que comprende todas las Leyes, Decretos y Resoluciones dictados por sus Congresos desde el de 1821 hasta el último de 1827. Reimpreso cuidadosamente por la edición oficial de Bogotá publicada en tres volúmenes. Caracas: En la Imprenta de Valentín Espinal. 1840.”

NOTE.—The names of the capitals, or chief places of departments, provinces, or cantons, are omitted where they are the same as the territorial divisions in which they stand.

TABLE NO. 1.—Continued.

Departments.	Provinces.	Cantons.
II. Venezuela, capital, Caracas.	1. Caracas.....	1. Caracas. 2. Guaira. 3. Caucagua. 4. Rio-Chico. 5. Sabana de Ocumare. 6. La Victoria. 7. Maracay. 8. Cura. 9. San Sebastian. 10. Ipire. 11. Chaguramas. 12. Calabozo.
	2. Carabobo, capital, Valencia.	1. Valencia. 2. Puerto Cabello. 3. Nirgua. 4. San Carlos. 5. San Felipe. 6. Barquisemeto. 7. Carora. 8. Tocuyo. 9. Quíbor.
III. Apure, capital, Barinas.	1. Barinas.....	1. Barinas. 2. Obispos. 3. Mijagual. 4. Guanarito. 5. Nutrias. 6. San-Jaime. 7. Guanare. 8. Ospinos. 9. Araure. 10. Pedraza.
	2. Apure, capital, Achaguas.	1. Achaguas. 2. San-Fernando. 3. Mantecal. 4. Guadualito.
IV. Zulia, capital, Maracaibo.	1. Maracaibo.....	1. Maracaibo. 2. Perijá. 3. San-Carlos de Zulia. 4. Jíbraltar. 5. Puerto Altagracia.
	2. Coro.....	1. Coró. 2. San-Luis. 3. Paraguaná, chief place, Pueblo Nuevo. 4. Casigua. 5. Cumarebo.
	3. Mérida.....	1. Mérida. 2. Mucuchies. 3. Ejido. 4. Bailadores. 5. La Grita. 6. San-Cristobal. 7. Táchira.
	4. Trujillo.....	1. Trujillo. 2. Esque. 3. Boconó. 4. Carache.

TABLE NO. 1.—Continued.

Departments.	Provinces.	Cantons.
V. Boyacá, capital, Tunja.	1. Tunja.....	1. Tunja. 2. Leiva. 3. Chiquinquirá. 4. Muso. 5. Sogamoso. 6. Tensa, chief place, Guatequé. 7. Cocuy. 8. Santa-Rosa. 9. Suatá. 10. Turmequé. 11. Garagoa.
	2. Pamplona.....	1. Pamplona. 2. San-José de Cúcuta. 3. Rosario de Cúcuta. 4. Salazar. 5. Concepcion. 6. Málaga. 7. Jiron. 8. Bucaramanga. 9. Pie de Cuesta.
	3. Socorro.....	1. Socorro. 2. San-Gil. 3. Carichara. 4. Charalá. 5. Sapatoca. 6. Velez. 7. Moniquirá.
	4. Casanare, capital Pore.	1. Pore. 2. Arauca. 3. Chire, at present Tame. 4. Santiago, at present Taguana. 5. Macuco. 6. Nunchia.

TABLE NO. 1.—Continued.

Departments.	Provinces.	Cantons.
VI. Cundinamarca, capital, Bogotá.	1. Bogotá.....	1. Bogotá. 2. Funsá. 3. Mesa. 4. 'Tocaima. 5. Fusagasugá. 6. Caqueza. 7. San-Martin. 8. Zipaquirá. 9. Ubaté. 10. Chocontá. 11. Guaduas.
	2. Antioquia.....	1. Antioquia. 2. Medellín. 3. Rio-Negro. 4. Marinilla. 5. Santa-Rosa de Osos. 6. Nordeste, chief place, Remedios.
	3. Mariquita, capital, Honda.	1. Honda. 2. Mariquita. 3. Ibagué. 4. La Palma.
	4. Neiva.....	1. Neiva. 2. Purificacion. 3. La Plata. 4. Timaná.
VII. Magdalena, capital, Cartagena.	1. Cartagena.....	1. Cartagena. 2. Barranquilla. 3. Soledad. 4. Mahates. 5. Corosal. 6. El Carmen. 7. Tolí. 8. Chinú. 9. Magangué. 10. San-Benito Abad. 11. Lórica. 12. Mompos. 13. Majagual. 14. Simití. 15. Islas de San Andres.
	2. Santa-Marta.....	1. Santa-Marta. 2. Valle-Dupar. 3. Ocaña. 4. Plato. 5. Tamalameque. 6. Valencia de Jesus.
	3. Riohacha.....	1. Riohacha. 2. Cesar, chief place, San Juan de Cesar.

TABLE NO. 1.—Continued.

Departments.	Provinces.	Cantons.
VIII. Cauca, capital, Popa- yán.	1. Popayán.....	1. Popayán. 2. Almager. 3. Caloto. 4. Cali. 5. Roldanillo. 6. Buga. 7. Palmira. 8. Cartago. 9. Tulúa. 10. Toro. 11. Supía.
	2. Chocó, capital, Quibdó.	1. Atrato, chief place, Quibdó. 2. San-Juan, chief place, Nóvita.
	3. Pasto.....	1. Pasto. 2. Túquerres. 3. Ipiates.
IX. The Isth- mus, capital, Panamá.	4. Buenaventura, capital, Iscuandé.	1. Iscuandé. 2. Barbacoas. 3. Tumaco. 4. Micay, chief place, Guapi. 5. Raposo, chief place at present, La Cruz.
	1. Panamá.....	1. Panamá. 2. Portobelo. 3. Chóreas. 4. Natá. 5. Los-Santos. 6. Yabisa.
	2. Veragua.....	1. Santiago de Veragua. 2. Mesa. 3. Alanje. 4. Gaimí, chief place, Remedios.

TABLE NO. 1.—Continued.

Departments.	Provinces.	Cantons.
X. The Equator, capital, Quito.	1. Pichincha, capital, Quito.	1. Quito. 2. Machachi. 3. Latacunga. 4. Quíjos. 5. Esmeraldas.
	2. Imbabura, capital, Ibarra.	1. Ibarra. 2. Otabalo. 3. Cotacachi. 4. Cayambe.
	3. Chimborazo, capital, Riobamba.	1. Riobamba. 2. Ambato. 3. Guano. 4. Guaranda. 5. Alausí. 6. Mácas.
XI. Asuay, capital, Cuenca.	1. Cuenca.	1. Cuenca. 2. Cañar. 3. Gualaseo. 4. Jirón.
	2. Loja.....	1. Loja. 2. Zaruma. 3. Carimanga. 4. Catacocha.
	3. Bracamoros y Mainas, capital, Jaen.	1. Jaen. 2. Borja. 3. Jeveros.
XII Guayaquil.	1. Guayaquil.....	1. Guayaquil. 2. Dule. 3. Babahoyo. 4. Baba. 5. Punta de Santa Elena. 6. Machalá.
	2. Manabí, capital, Puerto Viejo.	1. Puerto Viejo. 2. Jipijapa. 3. Montecristi.

TABLE NO. 2.

Alphabetical list of the rivers cited by the Sergeant Manuel de Jesús Atencio in his exploration of the beaches of the North coast of the ancient Province of Veragua in 1787.¹

Río Achote	
" Bejuco	
" Boca del Monte	
" Calobébora	
" " Chiquito	
" " Grande	
" Canoas	
" Cañas	
" Cañaveral	
" Chicaria	
" Chiriquí	
" Cholerne	
" Chucara	
" Gatún	
" Gigueros	
" Guarro o Guaro	
" Guavo	
" del Hato de la Herradura	
" Mela	
" Mulata	
" Mulaza	
" Pepe Prieto	
" Platanar	
" Quela	
" Quicla	
" San Pedro	
" Santa Catalina	
" Santa María	
" Santa Marina	
" Tetos	

THIRTY RIVERS ARE CITED, AND NONE OF THEM IS THE CULEBRAS RIVER.

¹A. B. Cuervo, Documentos Innéditos sobre la Geografía e Historia de Colombia, Tomo I, p. 307.

TABLE No. 4.

LIST OF THE PERSONS WHO, BY APPOINTMENT OF THE GOVERNMENT OF COSTA RICA, HAVE DISCHARGED THE DUTIES OF POLITICAL CHIEF OF THE CANTÓN OF TALAMANCA, SINCE THE YEAR 1861 TO THIS DATE.

<i>Name.</i>	<i>Date of appointment.</i>	<i>Vol.</i>	<i>Doc. Page.</i>
José Joaquín Iglesias (Juez Militar).....	May 15, 1861	III	526 133
Santiago, Lapiz and Chirino (<i>caciques</i> of various tribes).....	April 19, 1862	III	529 151
Antonio Birche (Cacique).....	Dec. 10, 1873	III	561 284
N. Willie (Cacique, second chief).....	" "	III	561 284
John Lyon (Secretary Director).....	" "	III	561 284
William Forbes ¹
Antonio Zaldaña (Cacique).....	June 4, 1880	III	561 285
Liberato Zamora.....	Jan. 12, 1886	III	561 289
Ramón Hernández.....	Mar. 22, 1886	III	561 289
Dositeo Soto (ad interim).....	June 7, 1886	III	561 290
Temístocles Peñaranda.....	Feb. 4, 1887	III	561 293
Mateo Molina.....	Apr. 17, 1888	III	561 296
Jacinto Mora (Special Police Agent).....	July 28, 1888	III	538 189
Ramón Fonseca ¹
Ildefonso Ulloa.....	Nov. 24, 1888	III	561 299
Juan León (ad interim).....	June 26, 1889	III	561 305
General Carlos Patiño.....	Nov. 25, 1889	III	561 309

TABLE No. 4.—Continued.

<i>Name.</i>	<i>Date of appointment.</i>	<i>Vol.</i>	<i>Doc. Page.</i>
John H. Lyon (ad interim).....	Mar. 1, 1890	III	561 310
Teniente Coronel Francisco Alvarado.....	April 8, 1891	III	561 316
Bernardino Peralta Echeverría.....	Nov. 25, 1891	III	561 317
Dr. Hilario Zeledón.....	June 25, 1892	III	561 319
Buenaventura Corrales.....	July 11, 1892	III	561 319
Manuel Vargas R.....	Aug. 2, 1893	III	561 321
Jacinto Xirinach.....	Aug. 18, 1893	III	561 321
Lorenzo Castro Araya.....	June 13, 1894	III	561 322
Alejo Marín Jiménez.....	July 3, 1895	III	561 323
Rogelio Pérez.....	Apr. 1, 1897	III	561 324
Valentín Urbina.....	Aug. 20, 1897	III	561 325
Justiniano García (ad interim).....	Mar. 28, 1898	III	561 325
Tranquilino Badilla.....	Oct. 3, 1898	III	561 325
Paulino Méndez (ad interim).....	Apr. 10, 1899	III	561 326
Luis Mejía (ad interim).....	Oct. 6, 1899	III	561 326
Vicente Rodríguez.....	Dec. 22, 1899	III	561 327
Luis Mejía (ad interim).....	Dec. 1, 1899	III	562 375
Pedro Barahona (ad interim).....	Aug. 24, 1901	III	562 365
Federico J. Alvarado.....	Feb. 26, 1903	III	562 378
Zacarías Arrieta (ad interim).....	May 25, 1908	III	562 405
Ramón Figueroa.....	Apr. 21, 1911	III	569 444

¹The appointments of these officials are not included in this publication, but in Vol. III, Doc. 561, pp. 285 and 299, respectively, will be found the acceptance of their resignations.

ERRATA.

PAGE.	LINE.	READS—	SHOULD READ—
66	16	9th of	29th of
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153	11	published	printed
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248	7	Golfito River and Gulf of Dulce.	Golfito River at Gulf of Dulce
285	23	orological situation . . .	orological formation
315	2	counterfort	counterfort of cordillera
375	23	southwest	southeast
376	25	pp. 63, 64, 72	pp. 63, 64, 71
411	19	Languages of Tala- manca.	Languages of Costa Rica
413	14	near Suretca	(near Suretca)
440	10	which i a	which is a

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